

Re-embodiment Jurisprudence

Using Theatre and Multimedia Arts-Based Methods to Support
Critical Thinking, Feeling and Transformation in Law

by

Manpreet (Preeti) Kaur Dhaliwal
B.A., University of British Columbia, 2008
B.C.L., LL.B., Minor in Theatre, McGill University, 2013

on

the traditional territory of the WS'ANEC' (Saanich), Lkwungen (Songhees),
Wyomilth (Esquimalt) Peoples of the Coast Salish Nation

A Thesis Submitted in Partial Fulfillment of the Requirements
for the Degree of

MASTER OF LAWS

in the Faculty of Law

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University of Victoria.

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Gillian Calder, Co-supervisor
Faculty of Law

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Abstract

This thesis offers theoretical and practical explorations of how multimedia arts-based methods and embodied storytelling support critical and transformative understandings of law. Stories are subversive. Artistic and cultural practices have often been outlawed because stories can destabilize and threaten narratives told by nation states (narratives that often support systems of capitalism and colonialism). Using theatre as subject and method, the author demonstrates how laws live in bodies, with a focus on race, whiteness, migration and the *Komagata Maru*.

Drawing on various theatre practices as well as critical race, feminist and performance scholarship, the author calls for a new way of interacting with law: jurisprudential theatre. Jurisprudential theatre is a method that employs autobiography, utopian visioning, legal research and audience involvement to create plays that examine existing law while filling affective spaces that existing law neglects. This method builds an alternate archive that supplements existing laws but can also be used to study them. The author explains the method through a performance art piece titled *Re-embodiment*. She then uses jurisprudential theatre to examine the legal history of the *Komagata Maru* through case law and two play texts, all of which lay the groundwork for the method's application in the first draft of a play titled *Eustitia*.

Rather than laying my life and research out in a chronological, linear fashion with smooth transitions, this thesis blends scholarly, autobiographical, episodic and creative writing – sometimes abrupt, sometimes guided. This framework takes you on a journey to the *Komagata Maru* through my experiences and understandings of race, whiteness, law and trauma. This thesis asks you to bear witness while offering you life stories, performance art, the draft of a play, images and academic prose. So I invite you to join me in a creative and performative process that will move you beyond the confines of the page to online worlds and internal realms. Why? To study and experience (as best we can in a text-based relationship) the internal and embodied consequences of law alongside its external, material and relational impacts.

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Acknowledgments

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Frontispiece



Figure 1: Re-embodiment, performance art featuring Preeti Dhaliwal (4 Nov 2016). Original image posted on Twitter by @Nedical.



Re-embodiment Jurisprudence

Using theatre and multimedia arts-based methods to support critical thinking, feeling and transformation in law

Critical race theory
Storytelling
Race
Theatre
Trauma
Whiteness
Komagata Maru
Autobiography
MV Sun Sea
Erasure
Poetry
Performance
Witness.

Written

by Manpreet (Preeti) Kaur Dhaliwal

while living in an apartment on the traditional territory of the Swengwhung tribe of the Lkwungen Nation, a linguistic sub-group of the Coast Salish Peoples whose descendants are part of Songhees First Nation

as an uninvited guest on that territory.

1. Investigating how law lives in the body through theatre, performance and image

<u>1. INVESTIGATING HOW LAW LIVES IN THE BODY THROUGH THEATRE, PERFORMANCE AND IMAGE</u>	2
OUR JOURNEY.....	3
IS ABOUT.....	4
MIGRANT BODIES IN LAW	4
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THE WORK OF PERFORMANCE IN LAW	15
FORESHADOWING	16

Our journey

In the pages that follow, I hope you – the reader – will reflect with me about what it means to be a practitioner, learner, subject, survivor, adjudicator and body of law. Rather than offering you a traditional academic essay, I have juxtaposed stories, knowledge, quotes and images so that I can invite you on a journey where we put the pieces together.¹ This juxtaposition framework allows you to see where I am going but also how I got there. I've also housed part of this thesis online so that this encounter becomes a multimedia journey that can keep evolving and changing through diverse modes of interaction.

This multimedia juxtaposition framework may unsettle you at times. I have created intentional blank spaces to remind you that you can stop, take a break or choose to continue reading at any time, so that **we** - as writer and reader – can practice an ethic of consent.² Rather than falling into the trance of reading line after line without awareness of where and who we are, I encourage you to take offered moments of pause but also create your own, in order to feel, reflect, and question whether there is a connection between one section and the next for you. You may have noticed that I write “we” often. Academics and lawyers may be put off by this word and its lack of specificity. Some may believe it excludes them while others might assume it includes them. In all cases, I urge you to ask who you assume it includes or excludes and why. In my experience, “we” at least refers to those who are present which, in this particular encounter, includes you and I.

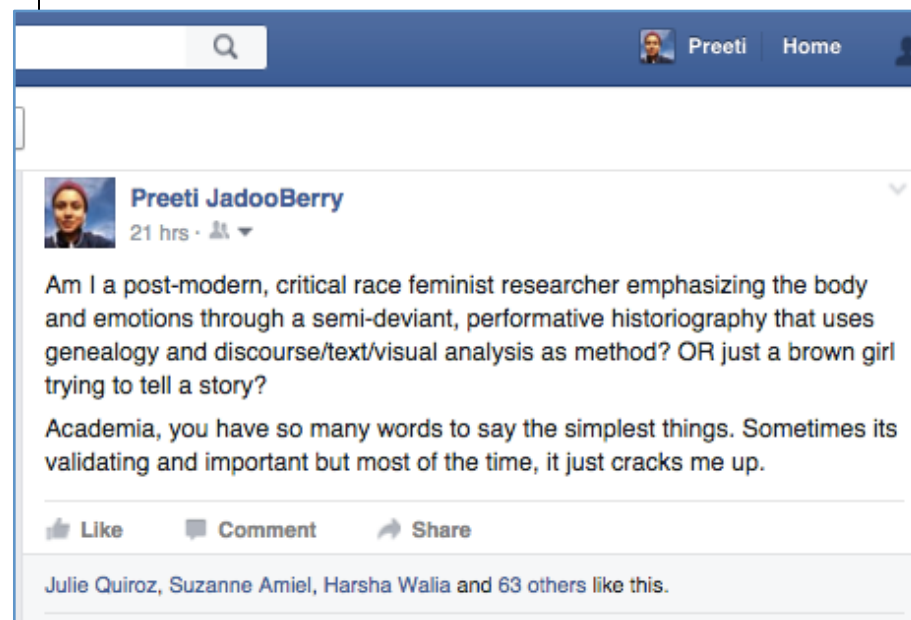


Figure 2: My Facebook Status (16 February 2016). Screenshot by Preeti.

I sometimes personify institutions rather than naming specific agents and actors (see Figure 2). If this word choice irritates you in some places but not others, or feels like an academic infraction, you might ask yourself why (are the agents getting away with something? Who do you want named and who can remain anonymous?). If they don't dislocate you, then pause and reflection may be more challenging but I would still encourage you to try.

is about

The world I know is in the midst of a border crisis. Borders are preventing people from migrating, finding safety, having security. The European Union is referring to the high number of bodies traveling from South Asia, the Western Balkans, Western Asia and Africa as the “refugee crisis” or “migration crisis.”³ Major news outlets and high profile human rights organizations are reporting a “migration crisis.”⁴ *These “crises” inform the context of my thoughts.*

Xenophobic sentiments are increasing across Europe and the United States (amongst other places) and some borders are trying to close.⁵ But when the body of a Syrian child washed ashore on a beach in Turkey, some people’s hearts began to open. A poet named Warshan Shire wrote:

*you have to understand,
that no one puts their children in a boat
unless the water is safer than the land.⁶*

After Aylan Kurdi’s image covered newsfeeds, newspapers, tabloids and magazines across the globe, some borders began opening (Canada’s Liberal party pledged to accept 25,000 Syrian refugees as part of their 2015 electoral platform).⁷ *These images inform the context of my thoughts.*

A few months after being elected (and after Aylan Kurdi’s heartbreaking story), Prime Minister Justin Trudeau apologized for the Canadian government’s wrongdoing towards migrant bodies in 1914. A ship called the *Komagata Maru* was deported on the basis of racist legislation that year. The ship’s passengers were British subjects and brown-skinned Indians. Prime Minister Justin Trudeau did not describe the legislation as racist or the migrants as brown, however. *This absence informs the development of my thoughts.*

The Canadian government has not yet apologized for its mistreatment of brown-skinned Tamil migrants who arrived on the *MV Ocean Lady* and *MV Sun Sea* in 2009 and 2010. These migrants were detained under the leadership of Prime Minister Stephen Harper. These “crises,” deportations and detentions presume that human bodies are naturally bound to one place, that traveling makes them not belong.⁸ *My refusal to accept the logic of borders fuels my research.*

migrant bodies in law

“Migration is

lived embodiment.

Migration is also a matter of

and dislocation.”

not only felt at the level of

generational acts

of storytelling about prior histories

of movement

- Sara Ahmed,
*Strange Encounters:
Embodied Others
in Post-Coloniality,*
[line breaks and
spacing added].⁹



Figure 3: Indian immigrants on board *Komagata Maru* (1914). Photo taken from Library and Archives Canada.

I want to be as clear as possible about who I am, why I write and who I'm writing for. It matters. My curiosities and personal attachments tell you just as much about this thesis as a theory, and allow you to hold me accountable while understanding, agreeing and/or critiquing my work with a deeper level of nuance and hopefully some compassion. As Toni Morrison says, an "author's presence – her or his intentions, blindness, and sight – is part of the imaginative society."¹⁰ And so, these questions – who I am, why I write and who I'm writing for – will be revisited throughout these pages, in part through autobiographical snippets and by other not so obvious interventions.

I learned about the *Komagata Maru* as a child because my father had performed a play about it. It began informing why I was treated the way I was by the world, how my brown body was treated in the Lower Mainland of British Columbia. Like many of the ship's passengers, I am Punjabi, of Sikh heritage. Unlike the ship's passengers, I now reside in Canada as a first generation settler. Although my parents immigrated to Canada during the 1970s (i.e. to my knowledge I have no "direct" blood relation to the passengers), the genealogical relationship to these laws, this ship, this legal event and this story are very present in my life, the Canadian government's present relationship to brown bodies, and in Canadian law's ongoing treatment of migrants.

The *Komagata Maru* story is not only a crisis and moment of epiphany for me in Punjabi diasporic culture but more broadly in the legal history of Canada. The *Komagata Maru*'s passengers were deported because white settlers lived in a propertied relationship to the land. This "settler-colonial logic" that commodifies land and territory – demarcating it with borders, owning it and controlling it so that moving human bodies can be excluded – was also used to invade Indigenous Nations.¹² Suspended in time, the *Komagata Maru* is a liminal moment that can be extended over time to open law up as an institution. Used as a site for critical inspection, the *Komagata Maru* reveals the impact of exclusion on the human condition - its implications for belonging and what it means to be unwanted – but also the erasure of human life and embodied action in recorded state law.

Settler colonialism is being unable to fill in the blanks...
It is the logic of superiority, of primacy, of genocide.
It is the colonization of memory and of events that come to be known as "History." It is visiting a reservation or a refugee camp and wondering how this could have been your life. It is being thankful that this is not your life, that this is only a visit or a passion, a choice to be here. It is realizing that this confidence in one's place has been bought with the logic and practice of settler colonialism. It is wanting answers to inquiries you cannot yet, and probably will never, articulate. It is seeking epiphany through writing and finding only the proliferation of questions, of doubts, and of histories. Like these questions, and more than anything, settler colonialism is **ongoing**.

– Maya Mikdashi, "What is Settler Colonialism?"¹¹ [emphasis added]

Legal systems operate on internal logic, reproducing themselves while providing the sense of an objective reality and responsiveness.¹³ The Canadian government turned away the *Komagata Maru*, a ship filled with Indian passengers, at the Burrard Inlet in 1914; three times rejected the MS St. Louis, a ship filled with Jewish passengers, at the Halifax Harbour in 1939; and detained Tamil migrants on the *MV Ocean Lady* and *MV Sun Sea* in 2009 and 2010 (after falsely labelling them as terrorists). Circumstances change and processes appear to change but end results often remain the same: human bodies seeking refuge continue to be excluded by virtue of law and borders just as settlers, myself included, continue to benefit from the unjust appropriation of Indigenous jurisdiction and illegal settlement of Indigenous lands.¹⁴ In nearly 100 years, how much has changed?

It would be unfair and untrue to say the refugee claim process has not changed in the last hundred years. Since 1986, every refugee claimant is entitled to be heard and responded to by Canada's Immigration and Refugee Board.¹⁵

Unlike *Komagata Maru* passengers, *MV Sun Sea* and *MV Ocean Lady* passengers were heard and responded to individually or as families by the Immigration and Refugee Board. Yet their legal fates yielded similar results to those on the *Komagata Maru*, with the Canadian government appealing all accepted cases, many passengers returned to their country of origin, and some going missing upon return.¹⁶



Figure 4: *MV Sun Sea* (August 2010). Photo by MCPL Angela Abbey.

Rather than detaining passengers on a ship for two months (as the government did in 1914), the Canadian Border Services Agency (the federal agency responsible for border enforcement) locked the 2009 and 2010 passengers behind bars in detention centers.¹⁷ *MV Ocean Lady* passengers were detained without a written or spoken date of release.¹⁸ *MV Sun Sea* passengers were detained up to three years, children included (though technically “accompanying” their mothers).¹⁹ Having been labeled Tamil Tigers by mainstream media (short form for Liberation Tigers of Tamil Eelam - a militant organization in northeastern Sri Lanka), most passengers whose claims were still being reviewed at the Federal Court in 2015 were anonymized. Name removal was an attempt to ensure safer deportations because the Sri Lankan government detains and tortures individuals associated with the Tamil Tigers, as well as those it “believes” are associated (a belief that could arise more easily if a

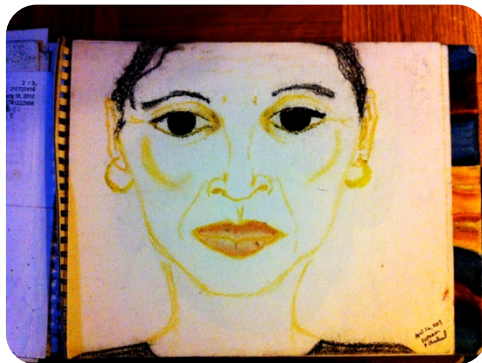
Canadian judgment included a passenger's name alongside online media that had labeled all passengers as terrorists).²⁰ Anonymized, disappeared in detention centres and deported to the unknown, these people were erased.



Figure 5: Prime Minister Stephen Harper (center), Minister of Citizenship & Immigration Jason Kenney (right), and CBSA Director of Operations Ivan Peterson stand on *MV Ocean Lady* for photo opportunity in Delta, BC (21 Feb 2011). Photo by Jonathan Hayward, Canadian Press.

the face in law

This project resists cognitive dissonance by rendering visible what might otherwise be consciously or unconsciously forgotten.²¹ As I write this section, I'm looking at the image of a man I drew in my last year of law school, when I took up playing with pastels for the first time since elementary school. I saw him while on the back of a motorbike in Ubud, Bali. We were going in opposite directions. I must have seen him for less than two seconds but his face has been seared in my mind since. There was an unspoken pain about him, something I couldn't shake and needed to release. To this day, I don't know if it was his pain or mine – a reflection and transference or simply a projection – only that I needed to see it and have it seen. A few weeks later, a woman who worked in the hotel I was staying at in Vietnam pointed at me, then at my pastels before sitting across from me and waiting. I obeyed the unspoken command, peered into her eyes and began drawing a live person for the first time. I went on to



draw a variety of faces after that. Some were people I'd seen in passing, others came to life for the first time on the page, some were people I knew intimately but could no longer see into.

The drawings brought me solace at the end of law school and throughout my legal career (which involved adjudicating decisions at a worker's compensation board, articling at a boutique litigation firm and clerking for a Federal Court judge). Looking at them now, I realize they are about three things: visibility, loss and connection. Images tell stories that a person's words often cannot or will not. These images told my hidden tales but also defied the erasure of humanity I felt in law. They held my pain with aesthetic visibility.



When we speak of art giving witness, we usually mean that we are attempting to give form, address or visibility to things that are often inexpressible such as the effects of terror, pain, destruction, and erasure. In this way, the idea of witness, of testimony, is seldom if ever linked to things that are wholesome in our cultures. We give testimony it seems to unveil the hidden, to restore the wished away, the instinct towards the erasure of shame.

- Chris Abani, "Painting a Body of Loss and Love in the Proximity of an Aesthetic."²²

Figure 6: Pastel portraits drawn and photographed by Preeti.

In her recent work on ethics, Judith Butler considers how we imagine “otherness.”²³ Drawing on Emmanuel Levinas, she argues that empathy is unconsciously triggered when we see faces because it reminds us of the precariousness of life. The fragility of a face reminds us that we humans cannot survive alone, we are interconnected, we need one another.²⁴ Not speaking English and working in the back of a restaurant, the Vietnamese woman was invisible in my tourist’s world but by asking me to draw her, she reversed our power dynamic. She defied erasure, took agency and told me what to do in a situation where economics and citizenship could dictate the opposite. It’s clear to me now that I started using pastels during my legal career because, for me, drawing temporarily remedied the invisibility produced by the system I worked in – the faces it erases, the bodies it renders invisible, the issues it chooses to ignore.

In *Regarding the Pain of Others*, Susan Sontag says photographs can be “a means of making ‘real’ (or ‘more real’) matters that the privileged and the merely safe might prefer to ignore.”²⁵ She adds, “Narratives can make us understand. Photographs do something else: they haunt us.”²⁶ In this project, I am offering narrative and image to invite you into my process of coming to understand the power of story in law, the pain of erasure and exclusion in law and the impacts of embodying law. I am not trying to impose my narrative on you or persuade you to believe what I believe. I am, however, asking you to try on my thoughts, arguments and stories so that you can investigate your reactions. I encourage you to work towards developing empathy, questioning the sources of your critique, and disagreeing constructively with care while also enjoying moments of comfort or validation.

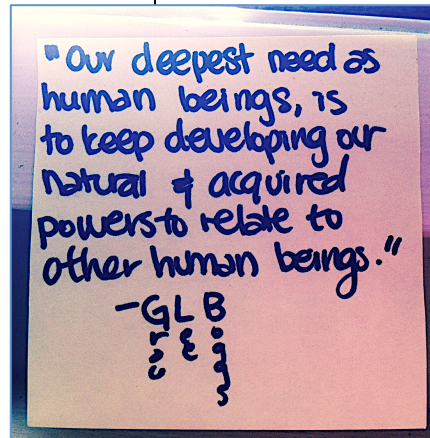


Figure 7: Grace Lee Boggs quote written and photographed by Preeti.

*In a fractured age, when cynicism is god, here is a possible heresy: **we live by stories, we also live in them.***

One way or another we are living the stories planted in us early or along the way, or we are also living the stories we planted - knowingly or unknowingly – in ourselves.

We live stories that either give our lives meaning or negate it with meaninglessness.

If we change the stories we live by, quite possibly we change our lives.

- Ben Okri, A Way of Being Free²⁷

the stories of law

Law’s stories cannot be untold but can be retold and re-examined in order to reconstitute legal events. By creating space to express and explore shame, anger, humiliation, violence and passion as they pertain to oppression and legal discourse, arts-based methodologies offer a meaning space between the object and the observer, the story and the reader.²⁸ In this space, unconscious boundaries can be broken and torn down through the development of empathy, something scholarly articles often fail to do as a result of direct and conscious approaches.²⁹

Near the beginning of this project, I asked law students and professors what they think small “l” law or big “L” Law is. I asked them to write their answers on a Q-card: definitions, images, metaphors, stories, memories, connections – anything that sprung to mind.

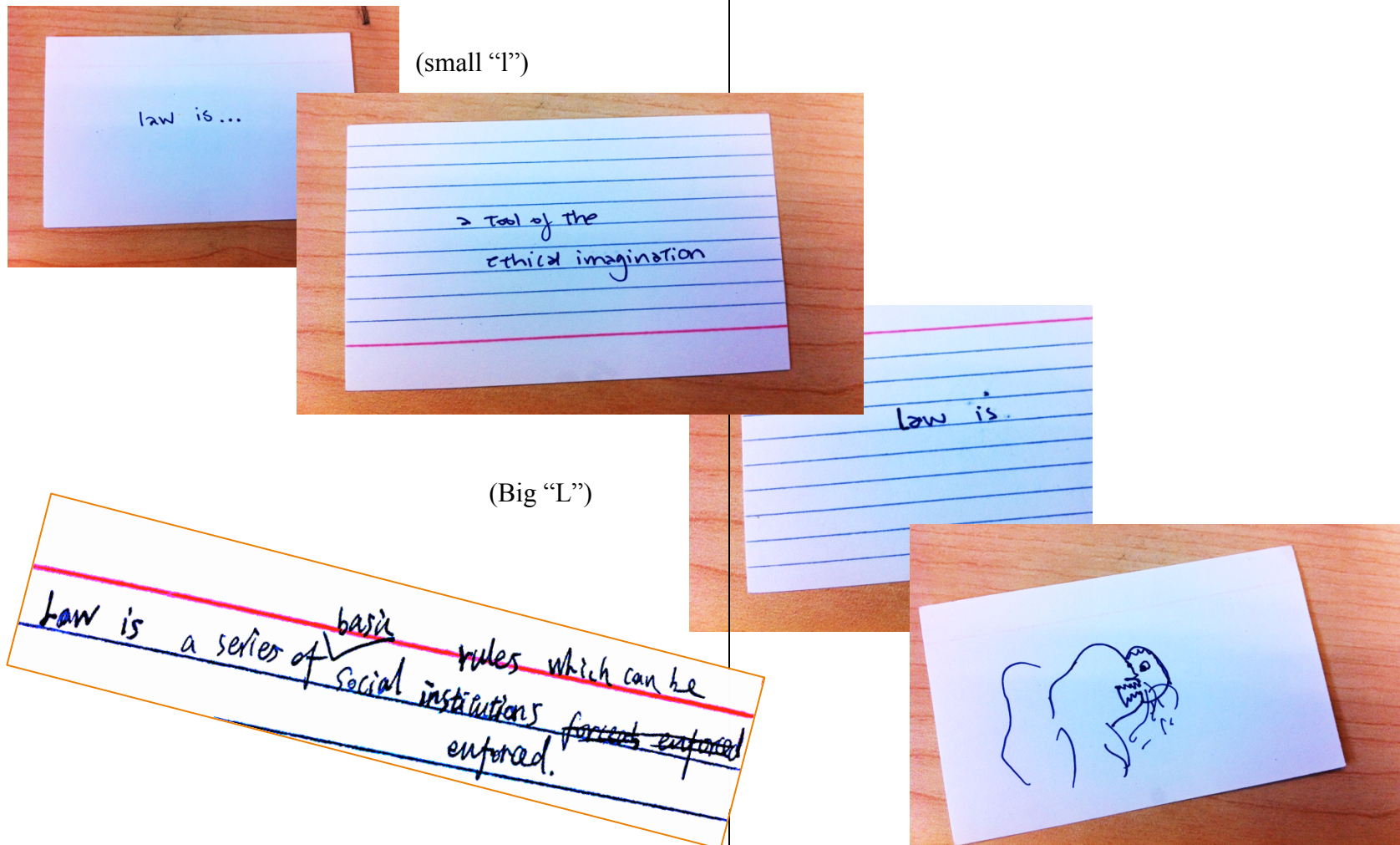
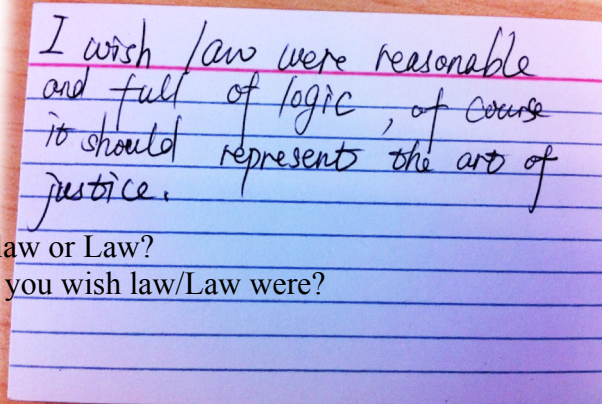


Figure 8: Anonymously written responses from graduate students and professors of law re: what is law? Photos by Preeti.

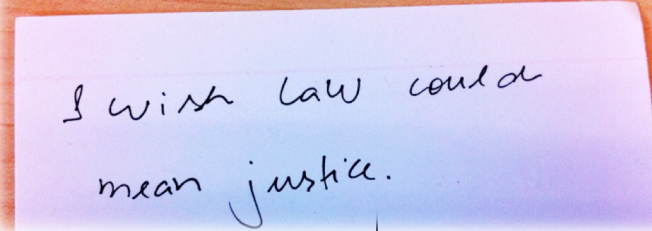
I then asked them what they wished law (or Law) were. I asked to be courageous in a legal classroom and dream because the affective and ideological ideas we see, feel, think and write in that space are opportunities. They are chances to critically and fantastically rehearse change that could be enacted outside in public and political spaces. Utopian performatives, as described in the work of Jill Dolan, are not just moments or openings on stage but opportunities in any performance (and I use this term expansively) to imagine and rehearse civic engagement, or begin learning what's blocking us from doing so.³⁰

Perhaps you might take a moment and also answer the questions:

1. What is law or Law?
2. What do you wish law/Law were?



I wish law were reasonable and full of logic, of course it should represent the art of justice.



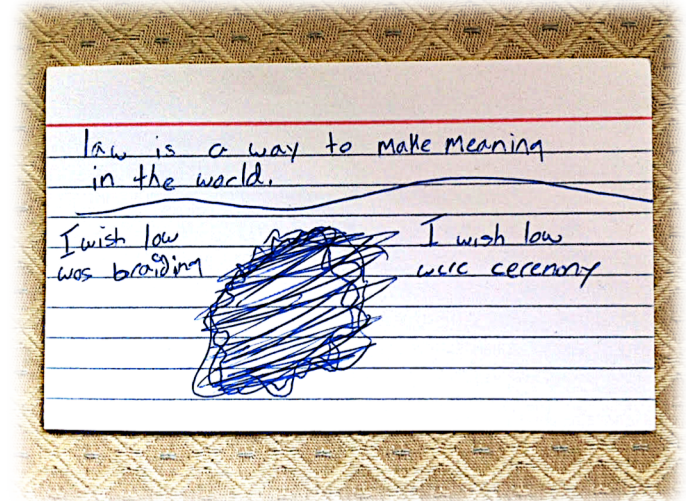
I wish law could mean justice.

Law is bigger than how it's taught in many law schools, how it's practiced in most courtrooms, and how it's explained by many legally trained individuals. It is more dynamic than legislated text or written judgments. It's a process, appearing in many places, coming to life through performativity and embodied action, speech acts and actions that do

and mean something in this world, shaping and producing identities, status, life and death. Law is not only produced by the state, but also created

by the people, by culture, by media, by film, by plays.³¹ It is a birthplace of systemic oppression but also exists in subversive acts,

practices and performances that guide our ways of being. Consequently, I will not distinguish between big "L" and small "l" law throughout this paper, instead referring to all laws as law, so that we can conceive of and imagine law expansively.



law is a way to make meaning in the world.

I wish law was bridging

I wish law were ceremony

Figure 9: Anonymous written responses from graduate students in law and law professors re: what they wish law were. Photos by Preeti.

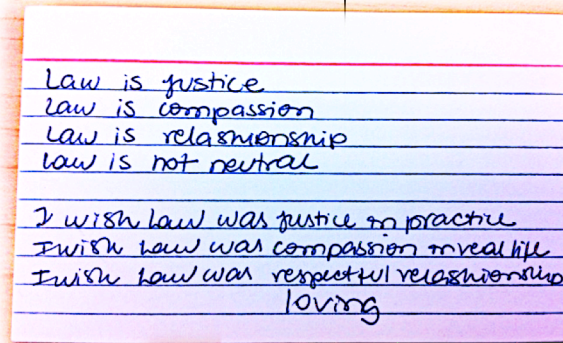
In my second year of law school at McGill, I wrote:

Law. This big idea lives in three small letters. This big idea lived in my mind for so many years but when I arrived at its doorstep, it was not nearly so grand as I had imagined. This big idea turned out to be like the Mona Lisa in the Louvre: small. Small and far away from the people's hands – intentionally kept at a distance, of course. And without any emotive expression. Why was she painted? What was the artist's intention? Does it even matter? We see her now – stagnant, immobile, preserved – restored by those who revere her and deem her to be important. We believe that she is a great work of art because that is what we are told. And this legend – fiction if you will – shall remain so long as the people continue lining up to see her, posing next to her but never touching her for fear that the oil on their fingertips will destroy her image. No, we can't have that. We can't destroy the masterpiece. It hangs on the wall only to be seen – to peer upon us through still, unblinking eyes.

How we can bring law closer to the people's fingertips?

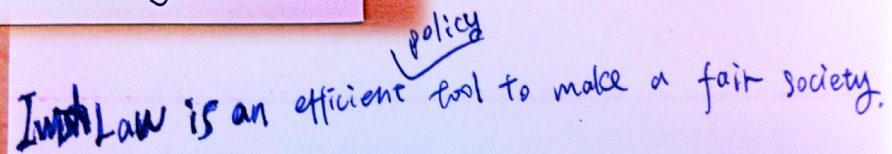
Theatre. Theatre allows us to tell, embody and share stories with an audience, a community of listeners – observers: spectators. It holds the potential to *affect* an audience, to inspire, sadden, awaken, change, disappoint, excite, *alter* them in some way.³² This relationship is mutual: audiences *transform* as do the performers. As people change, so too do the stories we tell and the way we understand the stories we are being told.

Part of this project's goal is to believe that law can be creative, healing, beautiful and accessible. I want these ways of seeing, knowing, understanding and practicing law to be valid so I'm attempting to create a place in law – the legal academy in particular – where I can learn, heal, and dream (or at least believe that I can). I want this place to be available to me as well as others who desire or need it: all who wish law were more welcoming, fair, loving and just towards them and/or the people or things they care for.



Law is justice
Law is compassion
Law is relationship
Law is not neutral

I wish law was justice in practice
I wish law was compassion in real life
I wish law was respectful relationship
loving



Imp^{policy} Law is an efficient tool to make a fair society.

Figure 11: Anonymous written responses re: what is law and what one wishes law were. Photos by Preeti.



Figure 10: Martin Luther King Junior written and photographed by Preeti.

A stockbroker named Bob interrupts my workout to make sure I'm breathing correctly: inhaling on release, exhaling on the push.

After seeing that I'm in good form (and offering an exaggerated demonstration), Bob asks what I'm studying. I tell him I'm doing a Master of Laws "but I'm writing a play. I'm using arts-based methodologies."

"Arts-based technologies?"

"Methodologies. It just means I'll try to write a play." I feel the need to explain: "I did a minor in theatre during my law degree. Doing things a little different now. I hated law, hated practicing for the two years I did and most of the studying before that."

Bob and I go on to chat about his South Asian daughter-in-law (yes, he asked where my family is from and wouldn't accept Vancouver as an answer), about my ex-partner (who he called a "mama's boy" as well as an expletive I won't repeat), and about his wife's "dysfunctional family." Before leaving, Bob asks, "When were you happy in the last eight years?"

My eyebrows furrow but my eyes widen.

"You don't have to answer now," he says, "Just think about it. When were you happy in the last eight years? Do that."

I find his question difficult. I've spent seven of the last eight years studying and practicing law. I haven't particularly enjoyed the legal part of it, instead finding joy in a theatre minor during my law degree while acting in plays, doing radio and facilitating a women of colour writing circle. Are those my answers?

People embody law but don't always understand how. If we begin understanding how law performs through stories, we can begin understanding how those stories live within us and re-enact themselves through us. We can also begin changing them by telling and embodying new stories.³³ As a connected community, people need to understand how laws live in bodies in order to comprehend and change how systemic power and oppression play out in our interpersonal relations.

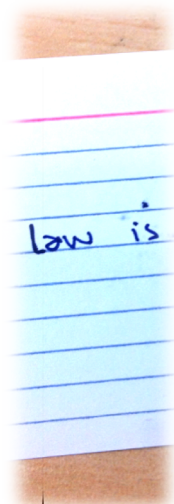
This thesis aims to creatively analyze seemingly personal events and situate them in a broader, shared cultural context while also taking seemingly national or political events and locating them in the body, in micro, personal and situational contexts.³⁴ The personal is political, conditioned by shared social structures.³⁵ These "systemic or pervasive political and cultural structures...are enacted and reproduced through individual acts and practices."³⁶ My work aims to render visible the power in previously nongendered, nonracialized discourses, sometimes subtly and sometimes bluntly.

Theatre offers law stories and also offers bodies a place to understand how law's stories live within them.³⁷ Artists and storytellers have long known that making the politics of knowledge and power visible by engaging with marginalized location and drawing on historical materialism is an act of resistance against capitalism and neoliberalism.³⁸ Through various art forms, this thesis visiblizes some of the ways that laws live in my body so that I can transform how they perform through my body and the ways in which I have housed them.

bodies of law, bodies in law (archive and repertoire)

State law is intimately connected to the terrains of the body. Its violence, rules, categories and protections inform our identities, impact our encounters and live through our embodied interactions. Yet its authority lies primarily in a two-dimensional archive filled with things: documents, maps, written judgments and rules.³⁹ Rebecca Schneider, a Professor of Performance Studies at Brown University, traces the root of the archive to the archon - the master's house – d “and, by extension, the architecture of a social memory linked to the law.”⁴⁰ While the legal archive is expanding to include sound and video recordings, writing is the status quo, preferred over other forms of knowing, understanding and seeing because print is still seen as an autonomous “stable signifier.”⁴¹

Diana Taylor, founding director of the Hemispheric Institute and a professor in Performance Studies at New York University, offers “repertoire” as an alternative to the traditional “archive.”⁴² Repertoire “enacts embodied memory” such as “performances, gestures, orality, movement, dance, singing.”⁴³ The archive considers these acts non-reproducible knowledge due to their decidedly ephemeral nature or because they require people to participate in the production and reproduction of knowledge by “being there.”⁴⁴ So when pondering the age-old jurisprudential question, “What is law?” – theatre is part of the answer. Experiences, perceptions, narratives and how we frame them are all part of the answer. Rather than law ruling the subject, the subject's experience should constitute law, be seen and understood as law, serve as (rather than under) law while interacting with, adapting to and evolving alongside the world outside of it.



Embodiment does not live outside the legal system yet the body is rarely considered in legal studies, spaces and philosophy. In this thesis, I use my body to reveal jurisprudential omissions, contradictions and conflicts.⁴⁵ Through performance and story, I use my body to reveal what the traditional archive could otherwise neglect, sometimes exposing how law constructs a world of fiction by peopling itself with a particular set of signs, costumes and bodies.

“Law and its jurisprudences,

even of the critical variety,
are based in theologically grounded ontologies which

treat the *body of the scholar,*

the interpreter,

as an unwanted intrusion
into the mind.

Its practices seek to render the body
with all of its foibles

mute.”

- Marrett Leiboff, “Towards a Jurisprudence of the Embodied mind Sarah Lund, Forbrydelsen and the Mindful Body” [emphasis and spacing added]⁴⁶

Law does not have to be handed down by a legislator. It is something we, as humans, can find within ourselves: localized, embodied, adaptive.⁴⁷ Theatre – embodied stories – is one way of locating and reconnecting to embodied law. I argue theatre should also be studied as law so that society develops the capacity to approach law with an artist's sensibilities and understand law through multiple stories, narratives and worldviews.

the work of performance in law

I set out in this project with these questions in mind:

- How can theatre and play texts fill affective spaces that the law neglects?
- What work can performance do to render visible the impact of whiteness in the Canadian legal imagination?
- How can performance and arts-based methodologies defy the erasure of human life and embodied action that occurs in law?

These questions are influenced by writers who forged and are forging new paths to talk and write about race. The words of Toni Morrison, James Baldwin and Junot Diaz in particular gave me guidance and courage, as did the writings of scholars such as Patricia Williams, Chandra Talpade Mohanty, Mari Matsuda, and Joshua Takano Chambers-Letson who have already begun the work of bringing story, performance, law and bodies together.⁴⁸ The questions are also inspired by theatre practitioners such as Anna Deveare Smith and Augusto Boal who dare to perform race and rehearse for social change.⁴⁹ My inquiries are based on the centrality of experience in the body, and theatre's capacity to challenge assumptions that racism is an inevitable, permanent part of all social landscapes.

The actual formation and articulation of the questions took many conversations and iterations to reach, however – with fellow students such as Darcy Lindberg, my supervisors Gillian Calder and Monica Prendergast, professors of an Indigenous Legal Theory course I audited (Val Napolean, Rebecca Johnson, Tracey Lindberg and Hadley Friedland), and even a

few people I met on Tinder (yes, Tinder, the dating app – when someone asks you what you're studying, it forces you to answer the question!).

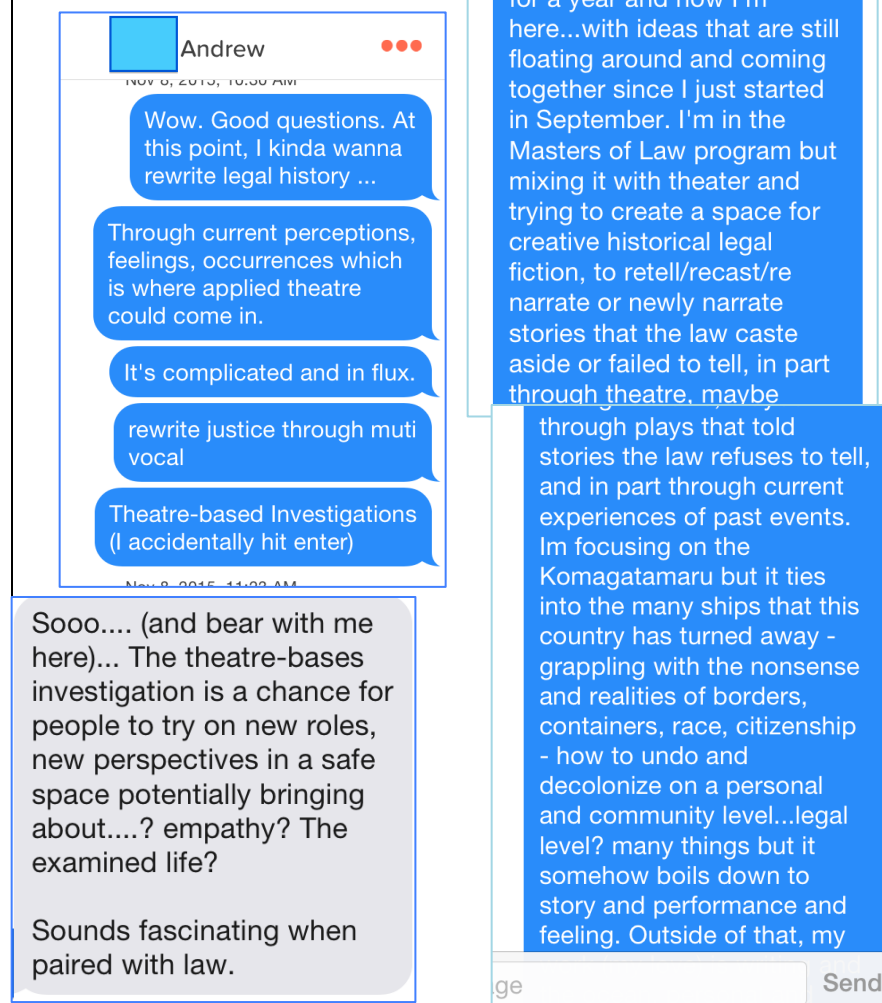


Figure 12: Tinder conversations re: my research questions. Screenshots by Preeti.

I

My project's questions enable me to take law out of traditional archives of documents and records, reshape it and return it with new gifts. The project thus corrupts the archive while simultaneously creating an alternative archive where we – you and I – can imagine new possibilities. Conflict resolution practitioner and peace-builder John Paul Lederach says the aesthetics of social change require building adaptive and responsive processes involving a “creative act that brings into existence processes that have not existed before.”⁵⁰ When creativity is central, we can “produce work which bears and invites rereadings” that allow for multiple interpretations.⁵¹ I argue that staying within conventional legal or time-constrained historical narratives does not allow for such innovative flexibility or creation.

I want a new jurisprudence, a performative one that doesn't rely “on an ideal of neutrality”⁵² or on text alone but on the body, experience, and the fraught realities of legal and historical oppression.⁵³ Understanding how law lives in the body and how we embody law forces us to delve inward, not only into the fictions of neutrality in Canadian law but also the fictions of equality in contemporary society. Using theatre as a source of law creates access to more stories and opens pathways to examine how those stories live in our bodies as law or as a result of law.

Foreshadowing

II

The next chapter contains a methodology called jurisprudential theatre. Jurisprudential theatre is a playwriting process that creatively and performatively investigates law's impact on society through four components: autobiography, legal historical research, utopian envisioning, and breaking the fourth wall (involving or implicating the audience). While performance art is different than a play, this chapter documents a performance art piece titled *Re-embodiment* (which I offered at a Decolonizing Conference) in order to demonstrate how the four components can be embodied. *Re-embodiment* also works to show you that there is no “right way” of using jurisprudential theatre: applying the four components depends on context and cannot be a mechanical process. By blurring the line between artist and researcher and obscuring epistemological boundaries through interdisciplinary research, jurisprudential theatre seeks to shift the frameworks, images and stories law supplies while pushing performers, participants and spectators to reimagine themselves and the world around them.

III

Through a performance and critical race perspective, the third chapter analyzes, compares and supplements case law with play texts. *Re: Munshi Singh*, [1914] 20 BCR 243 (BCCA), the legal case determining whether passengers on the *Komagata Maru* would be permitted entry to Canada, is examined alongside two plays that apply elements of jurisprudential

theatre: Sharon Pollock's 1976 play *The Komagata Maru Incident*, and Ajmer Rode's 1979 play *The Komagata Maru*. Pollock and Rode's works enact legal histories that are not recorded in traditional legal archives (case law or textbooks). Their play texts, particularly when performed but even in written form, offer an alternate, embodied archive, a jurisprudence that transmits itself through bodies, memories and retellings.

To prevent a simple asymmetrical presentation of the past but also to expose the historical impact of racist policies and attitudes today, I use autobiography. My personal stories offer one example of what happens to the mind, imagination and behaviour of the objects of legal, racial oppression beyond the time of an event. To further demonstrate the ongoing (but more subtle) power of whiteness in the Canadian legal imagination, I juxtapose the two play texts with Prime Minister Justin Trudeau's 2016 formal apology regarding the treatment of *Komagata Maru* passengers. Rather than examining stories centered on consequences to the victim, this chapter thus analyses the impact of racism on those who are objects of it and those who perpetuate it.⁵⁴

IV

While law permits testimony and certain forms of representation to be expressed within its container, it also delimits the ways in which trauma and stories can be expressed, understood and responded to. This narrowing determines which experiences are privileged and recognized, and which are erased.⁵⁵

Chapter IV is about the hope and promise of jurisprudential theatre. It begins applying the jurisprudential theatre methodology, blending my experiences of law, Prime Minister Trudeau's *Komagata Maru* apology and the *Munshi Singh* case in a queer love story between a lawyer and lady justice, *Eustitia*. This chapter contains solely a link to the evolving story of Eustitia, whose heart lives outside her body, and a lawyer who is working to return Eustitia her heart but is thwarted by death. As this work of jurisprudential theatre evolves through workshop and performance, experience and reimagining, the link's content will change. Like Eustitia's heart, it will continue to beating while finding it's final (or not) form.

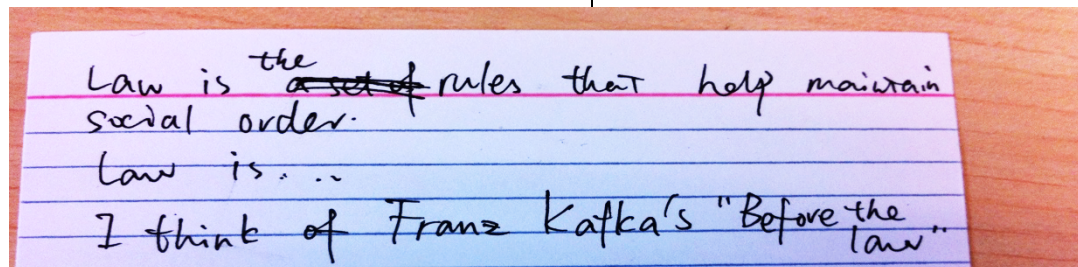


Figure 13: Anonymous Q-card response to "What is Law?" Photo by Preeti.

In this project, praxis matters, and witness also matters.

Embodiment and performance are crucial to understanding how law lives in our bodies, consciously and unconsciously.⁵⁶ Law passes down through stories we want to hear, images we want to see and experiences we want to have. Yet law also travels in stories we had and have no choice in being subjected to – ones we don't remember but nevertheless impact our actions and lives through daily silences, ignorance, privileges and pain. This project asks readers, spectators and participants to interrogate those spaces while questioning justice and re-embodiment a personal, transformational and critical jurisprudence.

The project as a whole offers its reader space to explore the complexities of developing empathy. It also asks those who enter to bear witness between chapters, using the image of my face alongside text and your presence to resist legal erasures.⁵⁷

As we journey onward, I hope you'll play with the tension of what is subjective and what is objective, what is fact and what is value, what is disciplinary knowledge and what is aesthetic or cultural experience. I hope we work to create what Homi Bhabha calls humanistic knowledge: knowledge that works to build communities rather than models, one that offers a path of reasoning or represents the evolution of a story about truth, beauty or ethical value.⁵⁸ I hope this way of interacting with knowledge facilitates access to our creativity, capacity for transformation and development of empathy.

Ready?

¹ Elizabeth Adjin-Tettey, Gillian Calder, Angela Cameron, Maneesha Deckha, Rebecca Johnson, Hester Lessard, Maureen Maloney & Margot Young, "Postcards from the Edge (of Empire)" (2008) 17 *Social and Legal Studies* 5. This article employs a "scrapbook method," using text and images of postcards, emails, notes and people to communicate an embodied experience and experiential learning process. My supervisor and co-author of the cited article, Gillian Calder, asked me to read this piece when I began my LLM nearly two years ago. I've only come to it now, however, at the end of my journey and on my final round of edits. Yet the scrapbook method as well as the feminist and postcolonial framework employed in the article – one that defies the rigidity of academic conventions and Western epistemologies – lives in my thesis. That my thesis reflects and continues the work documented in this article demonstrates the ongoing performance of that work, and the transmission of knowledge through my Supervisor's presence, stories and embodied pedagogy.

² The notion of an ethic of consent arose in an online reading group discussion of Claudia Rankine, *Don't Let Me Be Lonely: an American Lyric* (Minneapolis: Graywolf Press, 2004), organized and facilitated by Mia Amir, Creative Director and Facilitator of *The Story We Be* (17 April 2016), online: Story We Be <storywebe.wordpress.com>. The group considered whether blank pages in Rankine's book offered the reader and writer an ethic of consent. I interpreted this to mean the possibility and choice of pausing or continuing. Ethic of consent is not a term of art I have otherwise encountered in my creative writing or academic research.

³ See "The EU and the Refugee Crisis" (July 2016), online: European Commission <<http://publications.europa.eu/webpub/com/factsheets/refugee-crisis/en/>>; see also European Civil Protection and Humanitarian Operations, "Refugee Crisis in Europe" (20 June 2016), online: European Union <http://ec.europa.eu/echo/refugee-crisis_en>.

⁴ "Europe's Migration Crisis" (2016), online: Human Rights Watch <<https://www.hrw.org/tag/europes-migration-crisis>>; "Migrant crisis: Migration to Europe explained in seven charts" (4 March 2016), online: BBC News <<http://www.bbc.com/news/world-europe-34131911>> (The BBC uses the term migrant "to refer to all people on the move who have yet to complete the legal process of claiming asylum. This group includes people fleeing war-torn countries such as Syria, who are likely to be granted

refugee status, as well as people who are seeking jobs and better lives, who governments are likely to rule are economic migrants.”).

⁵ See David Smith, “Trump signs order to begin Mexico border wall in immigration crackdown” (25 January 2017) US Immigration, online: The Guardian <<https://www.theguardian.com/us-news/2017/jan/25/donald-trump-sign-mexico-border-executive-order>>; see also News Wires, “Nearly 10 anti-migrant attacks a day in Germany” (26 February 2017), online: France 24 <<http://www.france24.com/en/20170226-germany-10-anti-migrants-refugees-attacks-day-data-xenophobia-racism>>; see also see also “UN refugee chief: Worrying ‘climate of xenophobia’ in Europe” (19 June 2016), online: Euractiv <<https://www.euractiv.com/section/global-europe/news/un-refugee-chief-worrying-climate-of-xenophobia-in-europe/>>.

⁶ Warsan Shire, “Globe Poetry: Home by Warsan Shire” (4 December 2015), Poetry, online: The Globe and Mail <<http://www.theglobeandmail.com/opinion/home/article27608299/>>.

⁷ See Jon Stone, “Syrian refugee crisis: How different countries have responded” (1 September 2016) UK Politics, online: Independent UK <<http://www.independent.co.uk/news/uk/politics/syrian-refugee-crisis-how-different-countries-have-responded-france-lebanon-uk-a7220616.html>>; see also Associated Press Toronto, “Canada meets target to resettle 25,000 Syrian refugees” (1 March 2016), online: the guardian <<https://www.theguardian.com/world/2016/mar/01/canada-target-resettle-25000-syrian-refugees>>.

⁸ See Andrea Smith, “Foreword” in *Undoing Border Imperialism* (Vancouver: AK Press, 2013). Drawing on the work of Indigenous activists in Arizona, Smith argues for solidarity between immigrant rights and Indigenous movements. Smith explains that immigration is an Indigenous issue because settler-colonialism relies on the notion of a nation state which excludes migrants based on control and ownership of land and territory demarcated by borders. Rather than advocating for citizenship, she argues a liberatory vision for immigrant rights is one that questions the logics of the settler state itself. See generally Renya Ramirez, *Native Hubs: Culture, Community and Belonging in Silicon Valley and Beyond* (Durham: Duke University Press, 2007): Ramirez argues that the concept of “urban Natives” in the United States presumes that Indigenous people must be in a fixed location and did not travel prior to colonization.

⁹ London: Routledge, 2000 at 90.

¹⁰ Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (Cambridge: Harvard University Press, 1992) at xii.

¹¹ (17 July 2012), online: Jadaliyya <<http://www.jadaliyya.com/pages/index/6453/what-is-settler-colonialism>>.

¹² Smith, *supra* note 8 at x.

¹³ See Thomas E Webb, “Exploring Systems Boundaries” (2013) 24 *Law Critique* 131- 151; see also Jürgen Habermas, “Law as a Medium and Law as an Institution” in Gunther Teubner, ed, *Dilemmas of Law in the Welfare State* (New York: Walter de Gruyter, 1986) at 203-220.

¹⁴ Harsha Walia, *Undoing Border Imperialism* (Vancouver: AK Press, 2013). Walia argues anti-immigrant xenophobia, white supremacy, and settler colonialism are mutually reinforcing in ways that prevent people from seeing how they are fully connected and offers stories and a complex, intersectional understanding of solidarity work between Indigenous peoples, immigrant peoples and non-immigrant people of colour.

¹⁵ *Singh v Canada (Minister of Employment and Immigration)*, [1985] 1 SCR 177.

¹⁶ See Canadian Council for Refugees, “Sun Sea: Five Years Later” (August 2015), online: *Canadian Council for Refugees* <<http://ccrweb.ca/sites/ccrweb.ca/files/sun-sea-five-years-later.pdf>>.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ See *Thanabalasingam v Canada (Citizenship and Immigration)*, 2015 FC 397 at paras 14, 69-70.

²¹ See Chris Abani, “The Face: Cartography of the Void” *WarScapes* (29 February 2016), online interview: Warscapes <<http://www.warscapes.com/literature/face-cartography-void>>.

²² In Marissa Johnson-Valenzuela et al, eds, in *Dismantle: An Anthology of Writing from the VONA/Voices Writing Workshop* (Philadelphia: Thread Makes Blanket Press, 2014) at 40.

²³ Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004).

²⁴ *Ibid*; see also Matt Jones, “Towards a Global Empathy Imagining Otherness in the War on Terror” (2016) 12:1 *alt theatre: cultural diversity on the stage*.

²⁵ Susan Sontag, *Regarding the Pain of Others* (New York: Picador, 2003) at 9.

²⁶ *Ibid* at 14.

²⁷ (London: Phoenix House, 1997) at 46.

²⁸ See Orijit Sen, Rup Sidhu & Michael Yahgulanaas, “The Space Between: a Short Film on the Power of Art” (July 2016), online: Indian Summer <<http://indiansummerfest.ca/space-between/>>.

²⁹ *Contra* Susan A Bandes, *The Passions of Law* (New York University Press, New York, 1999).

³⁰ See Jill Dolan, *Utopia in Performance: Finding Hope at the Theater* (Ann Arbor: University of Michigan Press, 2005).

³¹ See Joshua Takano Chambers-Letson, *A Race So Different: The Making of Asian Americans in Law and Performance* (New York: NYU Press, 2013) at 2; see also Orit Kamir, *Framed: Women in Law and Film* (Durham: Duke University Press, 2006) at 3; see also JL Austin, “Performative Utterances,” in *Philosophical Papers* (Oxford: Clarendon Press, 1961) at 220-239; see also Jacques Derrida, “Signature Event Context” (1977), in *Limited Inc* (Evanston, IL: Northwestern UP, 1988) at 1-23.

³² See Augusto Boal, *Legislative Theater*, translated by Adrian Jackson (London: Routledge, 1998); see especially Boal, *Theatre of the Oppressed*, translated by Charles A. & Maria-Odilia Leal (New York: Theatre Communications Group, 1985); see also Dolan, *supra* note 30; see Chambers-Letson, *ibid*.

³³ See Robert Cover, “The Supreme Court 1983 Term -- Foreword: Nomos and Narrative” (1983-84) 97 *Harvard Law Review* 4 (Heinonline); see also David Dante Troutt, *The Monkey Suit And Other Short Fiction on African Americans and Justice* (New York: The New Press, 1998).

³⁴ Judith Butler, “Performative Acts and Gender Constitution: An essay in phenomenology and feminist theory,” ed, Henry Bial, *Performance Studies Reader* (Routledge: London, 2004) at 157.

³⁵ Chandra Talpade Mohanty, *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (Durham: Duke University Press, 2003) at 3.

³⁶ Butler, *supra* note 34 at 157.

³⁷ See Michael Billington, “Verbatim Theatre” in Victoria Brittain & Nicolas Kent & Richard Norton-Taylor & Gillian Slovo, eds, *The Tricycle: Collected Tribunal Plays 1994-2002* (London: Oberon Books, 2014) 4; see e.g. Yael Farber, *Nirbhaya* (Play performed at The Cultch, 8 November 2015). *Nirbhaya* offered five South Asian women’s stories of sexual assault, testimonials based on the actors’ lives and a portrayal of the true story of Jyoti Singh who was violently raped and killed in Delhi in 2012. My neck twitches and body shudders – a visceral trail down my back – as I write these sentences (and every time I reread them), knowing the stories were true, that the actors *knew* of the violence they performed (each woman was telling her own true story). Audience members could not detach or distance themselves in ways most of us did while reading articles about the trial or changes in sexual assault laws in India. See e.g. Robbie McCauley, *Sally’s Rape* (1994) in Annemarie Bean, ed, *A Sourcebook of African-American Performance: Plays, People, Movements* (New York: Routledge, 1999) 246. McCauley, an African-American performance artist, wrote this piece from personal, socio-economic and historical issues. See e.g. Jordan Tannahill, *Age of Minority: 3 Solo Plays* (Toronto: Playwrights Canada Press, 2013). Inspired by true stories, Tannahill explores the lives of three queer youth, all of whom face violence and intolerance in directly or indirectly legal ways: a lesbian who defects from the army before being deployed to Iraq, a teenager from East Berlin who is shot while attempting to cross the Berlin Wall in the 1960s, and a queer Muslim teen who navigates cyber celebrity within the varying rules of his family and school communities. See also James Baldwin, *Blues for Mister Charlie: A Play* (New York: Dial Press, 1964). Baldwin’s play openly navigates the legal system, telling the story of a murder in Mississippi before the Civil Rights movement began, openly speaking about prison and race. See also Brittain, Victoria & Gillian Slovo. *Guantanamo: Honour Bound to Defend Freedom*, a play taken from spoken evidence (London: Oberon Books, 2004); see also Dustin Lance Black, 8, Kate Sullivan Gibbens, researcher (Burbank: [unpublished version] 2012). Black’s play is based on firsthand observations, collected interviews and the transcripts of *Perry v Schwarzenegger*. It portrays the closing arguments of the trial that led to overturning *Proposition 8*, an amendment that eliminated the right to marriage for same-sex couples in California. See e.g. Muriel

Miguel, “Hot ‘n’ Soft” in Jean O’Hara, ed, *Two Spirit Acts: Queer Indigenous Performances* (Toronto: Playwrights Canada Press, 2013). Miguel’s play depicts the rawness of desire between two women, seen by some as erotica and by others as a bold political play; for me, a commentary on the laws of love, desire and women. See e.g. Kent Monkman, “Taxonomy of the European Male,” in Jean O’Hara, ed, *Two Spirit Acts: Queer Indigenous Performances* (Toronto: Playwrights Canada Press, 2013). Monkman explores desire and colonial politics, drawing on ideology and race, breaking the fourth wall and telling a story that makes viewers question law, history and authority. See e.g. Damien Atkins, Andrew Kushnir & Paul Dunn, *The Gay Heritage Project* (Play performed at the Belfry Theatre, Victoria, 25 March 2016). This play explores whether there is such a thing as a ‘gay heritage’ through short juxtaposed scenes, one of which involves a gay man offering a victim impact statement in court where AIDS is on trial. I saw this the play in 2013 and again in March 2016, and took a workshop on vocal masque technique (the methodology used to create this play) with its creators. *The Gay Heritage Project* demonstrates how the legal, the pedagogical, the everyday and the historical come together through short juxtaposed scenes on stage, and connects to a variety of bodies and stories, not just those who share the actor’s political, legal or cultural identities. Vocal masque – masque as in entertainment, rather than an artistic covering for the face – is a technique where the actor creates from the body first, rather than beginning with a script. One actor plays all characters in a scene that runs up to four minutes, without props or masks, instead creating distinct characters through physicality, voice and attitude. Much like my writing, this play has an emotional and narrative arc but does not construct a linear narrative for the viewer, instead offering juxtapositions that require the spectator to develop their own conclusions based on their understandings and experiences. In this way, the resulting play does not purport one particular way of seeing, creating or understanding an issue but rather dives into an issue’s complexities so that it is open to interpretation, discussion and affect. See also Richard Norton-Taylor, “The Colour of Justice” in Victoria Brittain & Nicolas Kent & Richard Norton-Taylor & Gillian Slovo, eds, *The Tricycle: Collected Tribunal Plays 1994-2002* (London: Oberon Books, 2014) 291; see also Sharon Pollock, *The Komagata Maru Incident* (Toronto: Playwrights Press, 1978); see also Ajmer Rode, *Komagata Maru*, Ajmer Rode & Surjeet Kalsey, transl (SFU Library: Vancouver, 1985).

³⁸ Mohanty, *supra* note 35 at 231.

³⁹ But see “Archives at the NCTR” *University of Manitoba* (undated), online: National Centre for Truth and Reconciliation <<http://nctr.ca/archives.php>>; see also *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193 at paras 85, 92, 101; see also Manpreet (Preeti) Dhaliwal, “The Performativity of Evidence: Oral History Testimony and Aboriginal Land Claims” (2013) 10.2 *alt theatre* 24.

⁴⁰ Rebecca Schneider, “Performing Remains Again” in Gabriella Giannachi, Nicke Kaye & Michael Shanks, eds, *Archaeologies of Presence: Art, Performance and the Persistence of Being* (London: Routledge, 2012) 64 at 68.

⁴¹ Diana Taylor, *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham: Duke University Press, 2003) at 18; c.f. Bernard J Hibbitts, “Making Motions: The Embodiment of Law in Gesture” (1995) 6 *J Contemp Legal Issues* 51. Hibbitts argues Western law has relied on the body and legal gestures since Mesopotamian and early Mediterranean societies through to the Western Roman Empire until now. Hibbitts defines legal gestures as intentional bodily movements signifying specific legal changes, conditions or relations. Consider raising one’s hand to signify taking an oath or a space where the “eyes of many” affirm a legal contract through witnessing, whether a will or a wedding, sometimes creating community by requiring people to gather in a physical space. Hibbitts argues that legal gestures, in this way, can offer a common ground and play a communal function by placing otherwise disparate members of a community on the same corporeal level. Where Hibbitts examines legal gestures as the body serving a function in law, this project investigates how law functions in the body when it doesn’t intend to.



⁴² Taylor, *ibid* at 20.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ See *ibid* at 52-3.

⁴⁶ Online: (2015) 2:6 Naveiñ Reet: Nordic Journal of Law & Social Research, Special Issue on Law and Art 77 <<http://jlsr.tors.ku.dk/issues/nmjlsr-06/>>.

⁴⁷ Influenced by Tracey Lindberg, “Guest lecture on *Birdie*,” Indigenous Legal Theory Seminar (February 2016), University of Victoria, Victoria, BC, Lecture [unpublished]; see generally Orit Kamir, *Framed: Women in Law and Film*. (Durham: Duke University Press, 2006) at xi-xii.

⁴⁸ See Morrison, *supra* note 10; see also James Baldwin, *Nobody Knows my Name: More Notes of a Native Son* (New York: Dial Press, 1961); see also Junot Diaz, “Second Person is Unbearable” (2015) YouTube. (25 April 2016), online: <https://www.youtube.com/watch?v=vDE3_XvS9ok>; see also Mohanty, *supra* note 35; see also Mari Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 11:7 Women’s Rights Law Reporter 7; see also Chambers-Letson, *supra* note 31; see also Claudia Rankine, *Citizen: An American Lyric* (Minneapolis: Graywolf Press, 2014); see also Claudia Rankine, *Don’t let me be lonely*, *supra* note 2; see also Ta-Nehisi Coates, *Between the World and Me* (New York: Spiegel & Grau, 2015); see also Angela Y Davis, *Freedom is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement* (Chicago: Haymarket Books, 2016).

⁴⁹ See Anna Deavere Smith, *Fires in the Mirror: Crown Heights, Brooklyn, and Other Identities* (New York: Dramatists Play Service, 1997); see Boal, *Legislative Theater*, *supra* note 32; see also Boal, *Rainbow of Desires*, translated by Adrian Jackson (London: Routledge, 1995); Boal, *Theatre of the Oppressed*, *supra* note 32.

⁵⁰ John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford: Oxford University Press, 2005) at 73.

⁵¹ *Ibid.*

⁵² Matsuda, *supra* note 48 at 8.

⁵³ *Ibid.* Matsuda calls for new law proposals, non-neutral ones that promote the human spirit such as affirmative action, reparations for

Indigenous peoples, for the loss of their lands, and more. She says the controversy of such proposals “reveals how deeply they cut into the unresolved dilemma of neutrality that lies at the heart of American law” (8).

⁵⁴ Morrison, *supra* note 10 at 11-12.

⁵⁵ See Karen Crawley & Honni Van Rijswijk, “Justice in the Gutter: Representing Everyday Trauma in the Graphic Novels of Art Spiegelman” (2012) 16:1 Law Text Culture 93 (Heinonline).

⁵⁶ See generally Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge: Harvard University Press, 2002).

⁵⁷ The citations in the witnessings are footnotes rather than endnotes because everything needs to be seen all at once rather than fragmented and separated for order and easy reading.

⁵⁸ See Homi Bhabha, “Epilogue: Global Pathways,” Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014) at 267.

Witnessing

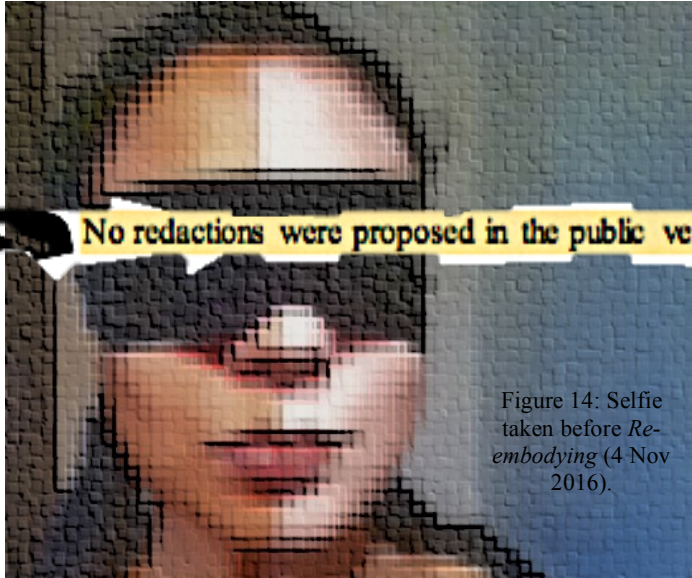


Figure 14: Selfie taken before *Re-embodiment* (4 Nov 2016).

No redactions were proposed in the public version of these reasons.

For the most part, refugee claims are non-adversarial. The Minister usually does not participate, or does so for a very limited purpose, such as testing credibility.

“Sean Harrington”

Judge

Witnessing

The relevant circumstance to this case is that the Minister participated in all aspects of the hearing before the RPD to argue that the applicants were not refugees or otherwise in need of protection. Thus, the applicants and the Minister were adversaries.

¹ *B135 v Canada (Citizenship and Immigration)*, 2013 FC 871 at paras 14, 36, 15 (from top to bottom) [*B135*] (redactions/emphasis added).

Witnessing

GURDIT SINGH:

The LAWYER has also mentioned about the minister of the Interior in the letter.

SECRETARY:

(Getting up) What does he say about him?

GURDIT SINGH:

The minister has authority to allow people stay in the country.²

² Ajmer Rode, *Komagata Maru*, Ajmer Rode & Surjeet Kalsey, transl (SFU Library: Vancouver, 1985) at 65.

Humanitarian and compassionate considerations—request of foreign national

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who **is inadmissible** — other than under section 34, 35 or 37 — or who **does not meet the requirements of this Act**, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria **or** obligations of this Act if the Minister is of the opinion that it is justified by **humanitarian and compassionate considerations** relating to the foreign national, taking into account the best interests of a child directly affected.³

³ *Immigration and Refugee Protection Act* (SC 2001, c 27).

Witnessing

I once heard a Federal Court judge say they were upset when an applicant showed up to an appeal and lined the back of the courtroom with family and friends. This presence made it harder for the judge to reconcile law and their feelings with the detached, objective, judicial decision that had to be made. Usually applicants – the people whose lives are in danger – aren't present. Absence makes decisions easier.

In appeals from the Immigration and Refugee Board's decisions, text is all that moves to the next level of appeal – no performance, no testimony, and usually no body: the claimant does not speak again and is not even required to be present. The transcript that moves on functions like a play text, describing actions and movements that accompanied or should accompany the spoken word or the nature of voice, though it occasionally describes a lost or muffled word. While there are recordings in the file, rarely (and never in my experience) would a judge listen to recordings given the volume of cases that are heard.

This process is efficient in an overwhelmed legal system but what does the lack of embodiment do? How does the absence of an applicant who is scheduled to be deported the following afternoon shift the law's performance? How would presence shift it?

“Witness works first by seeing and then by lingering.

The seeing...slows everything down, and the layering creates a thickness, a mass that sits in our consciousness without threat, even if it does reek of menace.

And this in turn allows us to approach by degrees **the violence of the event** and the damage it leaves behind.

The distance between the seeing and the mass is the impossibility of expression and this is conversely and paradoxically the very power of **witness.**”

- Chris Abani, “Painting a Body of Loss and Love in the Proximity of an Aesthetic”⁴

⁴ In Marissa Johnson-Valenzuela et al, eds, in *Dismantle: An Anthology of Writing from the VONA/Voices Writing Workshop* (Philadelphia: Thread Makes Blanket Press, 2014) at 41.

[REDACTED] the best predictor of the fate of those passengers of the Sun Sea, whose refugee claims are pending, is the fate of those who were actually returned.

[REDACTED]
[REDACTED]
[REDACTED]
B005's whereabouts is still unknown, or he is being held incommunicado.

[REDACTED]
[REDACTED] As to B016, there is a sworn statement from him that he was beaten and tortured for a year. He does not say why he was held. [REDACTED]
[REDACTED]

⁵ B135, *supra* note 1 at paras 19, 23, 24 (top to bottom).

Witnessing

Listen

If you don't hear state violence
daily, listen.
If you still don't,
listen to those who do, daily
listen. ⁶

⁶ Taken poem from Harsha Walia, "Sanctuary City: Dismantling the State?" (The City Talks: The Refugee Crisis and the Sanctuary City, delivered at Legacy Art Gallery, 21 January 2016) [unpublished]. In this talk, Walia discussed the complexity of the term "sanctuary city" and explored how to build places with access. She invited the audience to consider responding to a global crisis in local ways, sharing stories of local injustice to demonstrate the need for a sanctuary city and reviewing statistics that revealed patterns of injustice in the current "refugee crisis" (90% of individuals are black and brown, the majority come from the global south or tribal/peasant communities and the majority are poor: in other words, "poor racialized people are forced to migrate"). Walia highlighted myths and misconceptions, noting that Canada's extension to Syrian refugees means that people from other places are waiting longer, not that Canada is being generous. Additionally, privately sponsored refugees are not additional to the number that the government accepts but rather reduce the number of refugees the government funds (Canada accepted less than .01% of the world's displaced population at the time of this speech). Walia aptly highlighted that if we "welcome" refugees as an act of generosity we can also rescind that welcome: the borders could close upon a single event. Walia outlined three ways to begin the process of creating sanctuary: 1) on a policy level, cities can become sanctuary cities (such as Toronto and Victoria); 2) on a local level, people can build movements, increase access to resources and choose not to collaborate with the Canadian Border Services Agency; and 3) on an organizing level, all movements must create meaningful, sincere alliances indigenous groups.



Listen

If you don't hear state violence
daily, listen.
If you still don't,
listen to those who do, daily
listen. ⁷

⁷ *Ibid.* "Found poetry" takes words, phrases, sometimes entire passages from other sources, rearranges and reframes them – a literary collage of sorts, sometimes altering space between words or creating line breaks, sometimes adding or deleting parts of the source text, always striving to impart new meaning. I call these 'taken poems' because I have not found anything but taken someone else's words to create something new. For methodology of poetic inquiry, see: Monica Prendergast, "Poetic Inquiry, 2007-2012: A Surrender and Catch Found Poem" (2015) 21:8 Qualitative Inquiry 678.

2. Jurisprudential Theatre: A Method to Unmask, Deconstruct and Reimagine Law and its Erasures through Experience and the Body

Abstract: The law produces subjects and identities, ways of seeing, interacting and being with one another. Through theatre and performance, bodies can disrupt, question, address, reframe and subvert those ways. Our experiences and aesthetic encounters in theatre can rearrange our ideas of authority, justice and power because theatre offers space to explore affect but also to place love in the midst of all this, in the midst of law. It's odd to put the words law and love in one sentence, utopian almost, no place and also a place our society should venture to reach.

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This chapter is an experiment in legal pedagogy, performance and performative writing - an attempt to forge an embodied and performative method in law. Using autobiography, research, audience involvement and the imagination, jurisprudential theatre investigates how law lives in the body while carving temporal spaces and physical places for legal erasures and utopian imaginings. By exploring what theatre, the body and performance can teach society about law, this method employs affect and aesthetics to assist in developing empathy that can potentially transform the ways people interact with one another and the world around us.

Writing

"Writing is part of theorizing and writing is part of history."

- Linda Tuhiwai Smith,
*Decolonizing Methodologies: Research and Indigenous Peoples*⁵⁹

I was eating bitter baking chocolate, unsalted roasted peanuts and drinking coffee the first time I sat down to write this section of the paper, trying to figure out why theory mattered, why a professor told me it was dangerous to believe it didn't. All I could think of was Linda Tuhiwai Smith's book on decolonizing research methodologies – the first time I understood that theory mattered. Nearly everything else I've (been forced to) read throughout my legal and post-secondary education was written by white European men whose experiences and worldviews rarely offered me the opportunity to insert myself on the page, between words that were not written for an audience like me, a racialized female and traditional outsider to the legal institution, amongst other "disqualifying" factors.

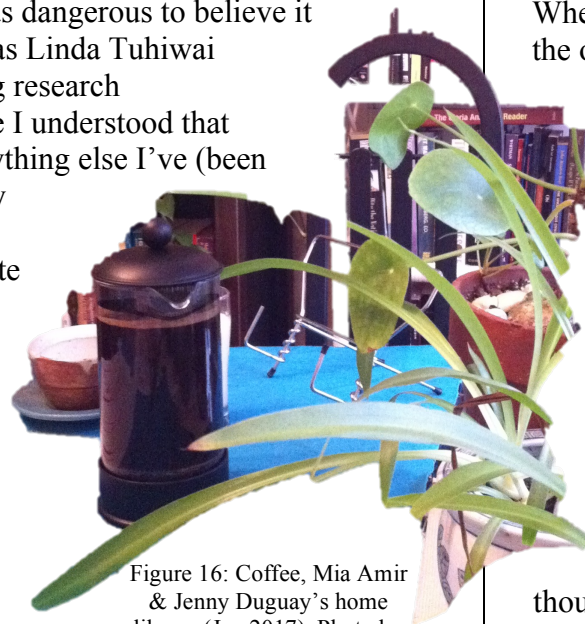


Figure 16: Coffee, Mia Amir & Jenny Duguay's home library (Jan 2017). Photo by Preeti.

This is not to say that none of these authors speak to me, that I don't appreciate or agree with philosophers like Foucault and Nietzsche, but that my exclusion and lack of representation or appearance as Other makes many theoretical texts less purposeful for me. This negation and/or erasure is part of the colonial and capitalist project and falls prey to an invisible neoliberal framework that progressive professors and students alike don't recognize, perhaps because they do not understand it to be painful, exclusionary or harmful.

Though I find theoretical containers constraining because they place specific thoughts in general frameworks, I also realize that they make floating thoughts visible and accessible so that someone else may understand, interact with or critique them. When I think of theory, I think of thoughts as fish swimming in the ocean: theory is the net that captures them; the author is a keeper who arranges them; the page is a tank that confines them. People stand outside the tank and observe: the page is the place for others to see – to comment on how pretty or ugly the fish are, to decide whether or not all those fish should have been placed in the same tank. Some fish survive, others won't. The tank is cleaned once in a while. The keeper may add underground castles, pebbles, new fish – perhaps algae eaters to clean the scum collecting on the walls – but the original tank remains. My aversion to theory is related to this tank: its exclusions and ongoing centrality cause conversations to happen *around* it with commenters often gazing inwards rather than living in the tank or speaking from the tank. The tank controls things within it while also framing the thoughts and narratives outside of it.

Having returned to this section (after pouring my third cup of coffee), I understand that rejecting or dismissing a theory does not make it go away. Nor does naming its erasure offer alternatives. I must instead “pose, contest and struggle for legitimacy of oppositional or alternative histories, theories and ways of writing.”⁶⁰ New tanks can be built and they can offer ways of interpreting what we are being told so that we can predict what happens next and deliberately imagine, create and do something different.⁶¹

Much of my critical thinking, whether I’ve read the theories directly or not, is shaped by feminist, critical race, post-colonial and post-structural theorists whose perspectives allow me to put my reality into perspective while developing my own way of looking at things.⁶² I’m attracted to these theories because they deconstruct why the tank is a tank, and speak to who is gazing inwards, sometimes even throwing new fish in or taking dead fish out. These written theories help me make sense of academia and my reality by revealing the underlying motivations, thoughts and structures of research and the world around me.⁶³ These theories also inform my relationship to writing, embodying, disembodiment and performing – the concepts and processes that carved my path towards jurisprudential theatre.

“I came to theory desperate, wanting to comprehend – to grasp what was happening around and within me. Most importantly, I wanted to make the hurt go away. I saw in theory then a location for healing.”

- bell hooks, *“Theory as Liberatory Practice”*⁶⁴

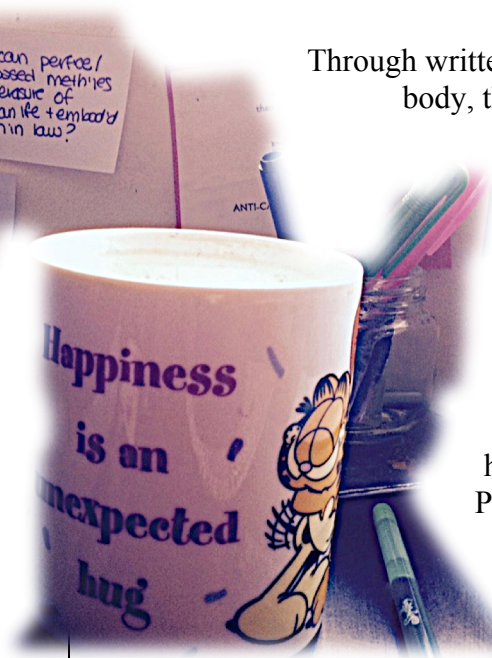


Figure 17: Coffee on my desk in my mug in front of my research questions (July 2016). Photo by Preeti.

Through written capture but also through the body, this chapter relies most explicitly on performance theory because like Chris Abani, I believe “any theory that cannot live in a human body and be read that way, is a failed theory.”⁶⁵ Writing in its traditional form – static on the page – is often used in academia to define the past and present, to create and record history, and to develop theory.⁶⁶ Performance, on the other hand, is responsive. Rather than posturing as a place of unity where people gather together, performance requires constant revision from the many activities, identities, bodies and motions it addresses.⁶⁷ Like a living, breathing thing, performance evolves.

Although written theory is capable of evolving, it does so slowly, without the dialogue and spatial connection that exists between bodies.

This project relies on theories and theatre methodologies written by others (who you will find in the citations and on the pages), but also draws on my lived experience and bodily knowledge to add to their work and offer you jurisprudential theatre. Jurisprudential theatre uses writing and embodiment to actively resist forces that silently and invisibly pressure us to disengage from one another, ourselves and the power of creativity.

Performing

Sometimes words fall flat – spoken, written or gestured – they do nothing. Sometimes they do something – they change how someone feels, thinks, acts: they perform. The same goes for images and actions. I argue that when a change occurs, the image, action or word is performative because it has been witnessed and received. Whether something is performative is thus a subjective and diverse determination: the receiver determines whether an expression is performative depending on what impact it has on them, their situation, their physical, emotional, spiritual and material lives.

When discussing performativity, French philosopher Jacques Derrida speaks of citational force and iterability.⁶⁹ Derrida argues it is not the word or utterance of a word that does something but the citational force behind it: the history, culture and repetition of words make them familiar and cause the change that renders an utterance performative. A performative expression thus *does* something only when it reiterates a norm within a particular context or community, a norm that is dependent on history and culture.⁷⁰ Language then *produces* a reality because it is spoken within a particular context and through a particular identity.

J.L. Austin, a British philosopher, takes a positivistic approach towards performativity. He asserts that two rules must be met in order for spoken words to be rendered performative: the utterance must invoke a convention that exists and is accepted; and the context must be appropriate for such an invocation.⁷¹ For Austin, an utterance can only *do* something (cause some sort of material, physical or situational difference) if it meets these two criteria. This approach renders performative

“As soon as performativity comes to rest on a performance, questions of embodiment, of social relations, of ideological interpellations, of emotional and political effects, of affect, all become discussable...When performativity materializes as performance in that risky and dangerous negotiation between a doing (a reiteration of norms) and a thing done (discursive conventions that frame our interpretations), between someone’s body and the conventions of embodiment, we have access to cultural meanings and critique.”

- Elin Diamond, *Performance and Cultural Politics*⁶⁸ [emphasis added]

utterances akin to operative provisions in statutes or verdicts given by juries.⁷² While Austin considers “misfires” such as inappropriate contexts and infelicity of intention, he neglects considering the role of power, authority and force in constructing convention.⁷³ By rendering the state and law as the primary sources of convention, Austin renders them too powerful in performativity.

Writing about performativity in the context of gender, philosopher and feminist theorist Judith Butler explicitly

considers power. She describes performativity as “that reiterative power of discourse to produce the phenomena that it regulates and constrains.”⁷⁴ For Butler, performativity relies on one’s “anticipation of an authoritative disclosure of meaning.”⁷⁵ This anticipation “is the means by which that authority is attributed and installed.”⁷⁶ In other words, anticipation of authority constitutes authority: expectation produces the “phenomenon that it anticipates.”⁷⁷ Power matters but repetition also matters. Performativity of gender thus relies on repetition, a ritual, internalized over time through culture, in the body.⁷⁸

I'm imagining Johnny Saldaña, a theatre practitioner and scholar, pacing along the centerfold of the page, throwing his hands in the air, telling me that writing is not performative and law is not a performance, that only work done on stage, practiced, rehearsed – with sweat poured into it – constitutes a performance.⁷⁹

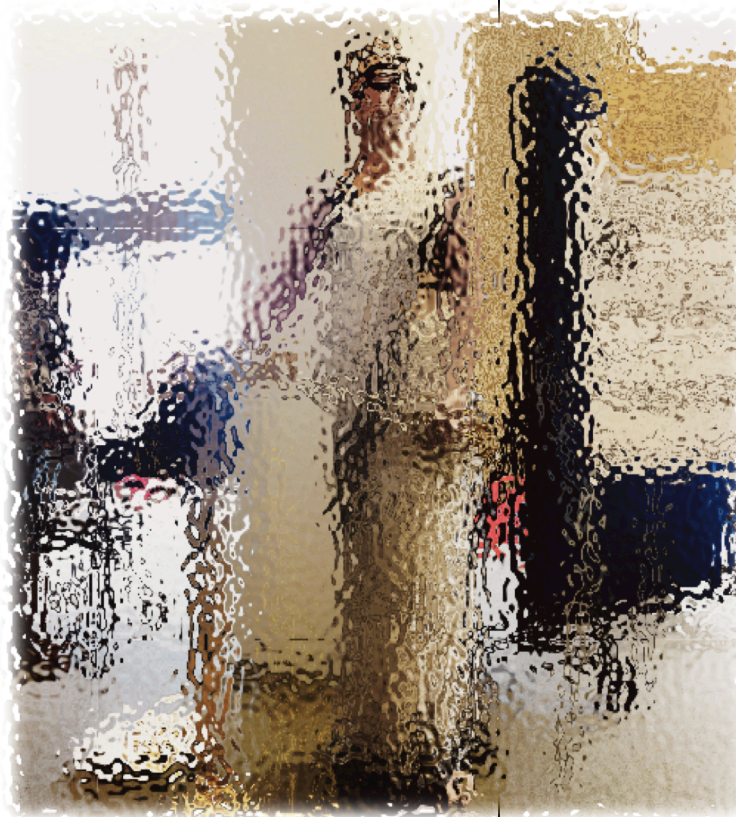
Dear Johnny,

All that is theatre and it is also performance. But performance happens all around us all the time. Even writing can be performative.⁸⁰ Without a spectator, there is no performance; but if one person (including oneself) takes notice – sees, watches, films, snaps a picture – and alters their thought or gaze, then a performance of some sort has occurred, whether conscious and conscientious or unconscious and thoughtless.

*With gratitude and respect,
Preeti*

Performativity should be approached with lessons derived from Mari Matsuda's writings, by:

- Rejecting the artificial bifurcation of thought and feeling;
- Believing our anger, pain, daily lives and the history of our peoples are relevant;
- Trusting our experiences are valid; and
- Remembering that we experience life under patriarchy and racial hierarchy in an ableist, heteronormative society.⁸¹



Some may easily do all of the above. For others, particularly those speaking from marginalized locations, the above criteria may require support. I argue for this approach because performativity should empower individuals, communities and societies to bestow meaning and significance in a way that acknowledges multiple interpretations. Performative words – in whatever form they are communicated – alter people in some way, whether or not that is visible, felt or understood by everyone. It means that words – spoken, written or gestured – as well as images and actions, *do* something. They do not have to change the world, but if they impact one person physically, emotionally, spiritually or materially, then, in my view, they are performative in that context.

(Don't worry, the abstract portions are nearly done. We are heading towards the body.)

Figure 18: *Re-embodiment*, performance art featuring Preeti (4 Nov 2016). Original image posted on Twitter, taken by @Nedical, edited by Preeti.

Eustitia: Can you introduce me now?

Preeti: Of course, I'd like to introduce you to Eustitia

the Woman who Sees Nothing but Knows All

I've only seen her image,
slender, swathed in navy cotton,
iron bar over her shoulders,
chains at its ends – equal length
but never equal distance from the ground
the discs never parallel:
one truth must prevail.

Law keeps the Woman
blindfolded:

red satin over her eyes in a room in a tower
in the centre of town
the place where decisions are made.

The People keep the Woman's heart
in a box outside her body
outside the tower
outside for all to see:
To preserve her.

The Woman has never left the tower, never
will.

Dominican-American fiction writer Junot Diaz says he introduces “multiple voices that, while they may have had the same roots” are “different enough” that the reader believes they are “in a room with a community.”⁸² These multiple voices transform a page – a “ridiculously inert two-dimensional thing” – into something that is “somehow connected or somehow metaphoric for the raucousness, the wildness of our world, our life.”⁸³ Such attempts make writing performative: words on a page begin revealing the world is constructed and composed of multiple realities, partial and partisan representations.⁸⁴

(Watch Junot here: https://www.youtube.com/watch?v=vDE3_XvS9ok)

Preeti (cont'd):

The Woman's mother died at childbirth.
No other offspring, the father gave the Woman her Mother's name,
decreed young Eustitia stay in the tower, in a teak box,
for all of childhood
hear all his decisions
so that she could learn to decipher
lies from credibility
right from wrong
fact from fiction
to produce one truth
to reduce stories to sentences
to make decisions
on the balance of his probabilities or
beyond his reasonable doubts
without seeing.

Preeti (cont'd):

When Eustitia felt
dissonance separated her
mind and heart
eyes and tears
internal truth and external decisions
for ease,
for the appearance of impartiality,
for the proper administration of justice.

By 13, rocks no longer drew blood when Eustitia fell;
At 16, the slip of a scroll drew no blood from her fingertips;
By 24, the tip of a knife no longer caused fear:

Eustitia's skin had thickened.

She was ready.

So her father died.

And Eustitia moved to the front of the room
in the tower in the centre of the city,
above the others.

No longer in a box but eyes covered
still
the People called her:
The Woman
who Sees Nothing but Knows All.

When she turned 40
Still without children
The People put her heart in a box
and said, "Air from the heavens keeps it beating."

**"And I believe that when they shatter
the body, they shatter everything...."**

- Ta-Nehisi Coates, *Between the World and Me*⁸⁵

I first imagined Eustitia during a three-day novel writing contest I participated in while articling at a boutique litigation firm in Toronto. I had docketed 220 hours that month and should've taken Labour Day weekend to rest but knew that if I didn't write for those 72 hours, I would resent my job for the next 11 months. So I wrote and Eustitia emerged.

Eustitia made decisions inconsistent with her heart and ethics because her heart had been removed from her body in order to preserve her, an idea inspired by my experiences in law. You see, shortly after entering law school and encountering law students, I realized that my heart was not safe within the Faculty's walls. My legal education – the part that was teaching me to understand legislation, judgments and cases – was working to separate my heart and mind, often pitting the two against one another. In an attempt to protect myself, I began visualizing leaving my heart outside the front doors. Reviewing my journals from first year, the words colonization and decolonization kept appearing: hearts cloaked in colonization, strangling silences, wars between my mind and heart, losing a sense of self. This separation quickly led to profound internal disconnect, disembodiment and fragmentation, leaving me less able to express myself and my thoughts or even identify them. Within a few weeks, I switched to a cage, hoping it would allow me to take my heart inside the Faculty and recognize myself but maintain control over it, so that it could not speak for me without explicit authorisation, so that it would not interfere with my academic performance or render me unsafe in social spaces.⁸⁶

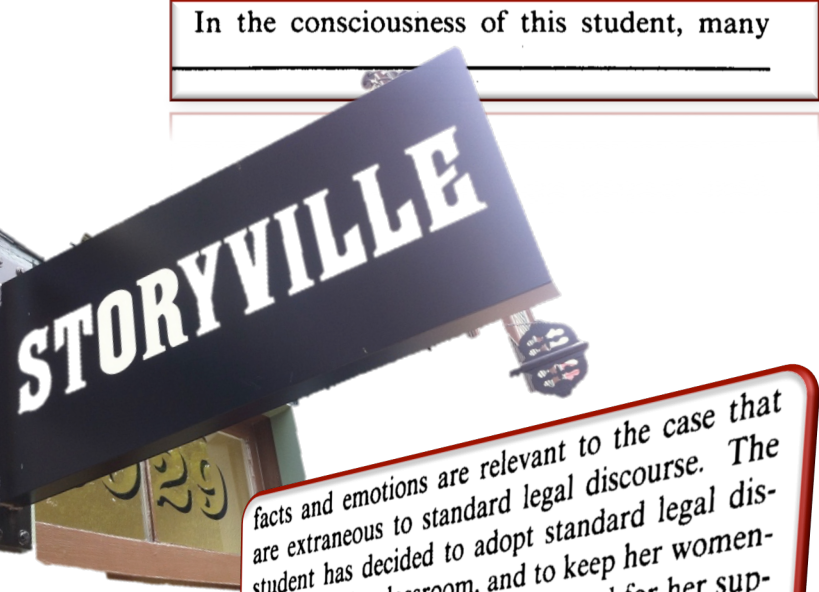


Figure 19: A storefront sign in New Orleans (June 2016). Photo by Preeti.

Mari Matsuda, "When the First Quail Calls"⁸⁷

facts and emotions are relevant to the case that are extraneous to standard legal discourse. The student has decided to adopt standard legal discourse for the classroom, and to keep her women-of-color consciousness for herself and for her support group. This bifurcated thinking is not unusual to her. She's been doing it throughout her schooling—shifting back and forth between her consciousness as a Third World person and the white consciousness required for survival in elite educational institutions.

This student, as she has become older, has learned to peel away layers of consciousness like layers of an onion. In the one class where she has a woman professor—a white woman—she feels free to raise issues of violence against women, but she decides to keep to herself another level of consciousness: her nationalist anger at white privilege and her perception that the dominant white conception of violence excludes the daily violence of ghetto poverty.

of ghetto poverty: conception of violence excludes the daily violence and her perception that the dominant white consciousness: her nationalist anger at white privilege

Eustitia:

I'm told my heartbeat fills the city
7 to 8 every night
7 to 8 every morning
the People hear my Heart beat
through speakers, boxed,
it speaks.

This rhythm makes the People happy,
increases communal sentiment
decreases crime rates:
reasons to deny returning it to my body
to keep me separated.

Embodying

In this thesis, embodiment is both corporeal and phenomenological. I use embodiment to describe living in and through the body, particularly to understand how

laws live in and through the body. I also use embodiment to describe conscious experience from my subjective perspective, focusing on race and using autobiography.⁸⁸ In both instances, embodiment requires thinking and feeling at the same time.⁸⁹ It involves undoing the Cartesian separation of body and mind and understanding that the mind does not possess “rational control over the body’s messiness and irrationality.”⁹⁰

Developing a heightened awareness of our bodies’ responses to the world and people around us is a necessary part of moving from law’s universalism and abstractions to performance.

Just as each person experiences the world differently, so too does each body. Embodiment does not require an able-body or cis body or a particular mental health. As a strategy to deepen awareness, understanding and connection, it only requires (to the extent that it is possible) that we not separate and contain ourselves in relation to one another or other parts of ourselves (unless we are aware of doing so and choose to do so anyway).

Embodiment is a way of thinking about bodily experiences such as pain, pleasure and suffering but also vulnerability, capability and constraints as they arise within specific times and places.⁹¹ Embodiment can mean choosing not to separate

from pain: the ways we hurt others, the ways others hurt. It can also mean allowing ourselves to experience joy and pleasure.⁹² Embodiment does not always involve choice, however. It can be oppressive when people do not get to choose the pain or pleasure in their bodies; understandably, in such instances, individuals need to separate from bodily experience.⁹³

Because processes of socialization and enculturation are enacted through the body, embodiment is a tool to begin understanding internalized cultural and legal scripts. Using all of the senses one has available in order to recognize sensorial, sensual and intercorporeal interactions on multiple levels, one can question and acknowledge embodied power, dominance and privilege in different situations.⁹⁴ Embodiment can thus frame “bodily change as a horizon for self-understanding and definition” with the body serving “as an agent interacting with others and with the world more generally.”⁹⁵ This understanding extends to how present day bodies and experiences ground themselves in historical processes.

Performance is embodied theory. It involves face-to-face encounters that make it harder for people to detach and separate from one another (and even ourselves) as we see ourselves reflected in another. In performance, presence is central and embodiment is the site of investigation. Disability perspectives that emphasize “intercorporeality” suggest that “the experience of being embodied is never a private affair, but is always already mediated by our continual interactions with other human and nonhuman bodies.”⁹⁶ Where critical race, feminist, postcolonial, and disability studies use embodiment to critique social norms and practices, performance offers experiential means to identify and challenge legitimated social forms of teaching, learning and knowing in order to understand how the human spirit can be liberated.⁹⁷

We must learn to be embodied because...

Disembodiment means disengaging.
It means succumbing to forces that want us to disengage
from our relations, from one another, from ourselves.
(I'm repeating this, I know.
You may choose to gloss past the repetition or ask why.)

I meet organizers and activists, lawyers and professors,
students and friends who are engaged politically but
disembodied: disengaged from their relations,
wilfully disengaged from their bodies,
unconsciously disengaged from their internal life;
disconnected from their embodied impact
on the people around them.⁹⁸

It frightens me.

Disembodiment is violent, a form of intimidation used with
political aim, allowing us to lose touch with our internal law.⁹⁹

Figure 20: Selfie taken before *Re-embodiment* (4 Nov 2016).

“Disembodiment is a kind of terrorism
and the threat of it alters the orbit of
all of our lives.



And like terrorism, this distortion is
intentional...”

– Ta-Nehisi Coates, *Between the World and Me*¹⁰⁰

*If I don't develop my own practice – both theoretically and
methodologically – I could take/fall into/co-opt another one,
one that is disembodied and unsuitable to my practice.*¹⁰¹

Making Jurisprudence (Visible)

Jurisprudence is defined as the study, science or theory of law. *Prudentia* means discretion, forethought, circumspection. *Juris*, stems from *jus* – law. Performance offers a way of knowing: a method of critical inquiry, a mode of understanding.¹⁰² Jurisprudential theatre explores jurisprudence in and of the body, using performance to theorize from experience, unravel what law does to the body and (re)discover laws that already govern our bodies. Law’s embodiments (conscious or unconscious, original or conditioned) are then made visible through aesthetics so that they may be confronted, felt, examined and potentially transformed.

Processes and powers of law are visiblized and communicated through aesthetics.¹⁰³ State law is often recognized, understood and enforced by the mere presence of uniforms, guns, black and white gowns, black and white documents. Aesthetics offer a way of conceptualizing and interpreting. While driving, for example, if you see flashing red and blue lights ahead, you might slow down if you recognize this signal as a cop car. In this instance, your action is modified by law but arises from a visual cue because aesthetics use the senses to communicate.¹⁰⁴

When investigating law as a subject in jurisprudential theatre, one might examine blackletter law that it is legislated, codified and written down; unwritten laws in the form of conventions; case law that emerges from judgments; or other legal orders such as cultural, religious, spiritual laws. This list of laws is not exhaustive but meant to show that there are a number of ways to conceptualize law in jurisprudential theatre.

Aesthetics then offer a medium to question modes of government and legal orders. State laws built on structures that reproduce and reify social domination by ruling classes, for example, often lead to the exacerbation of injustice.¹⁰⁵ Those who use jurisprudential theatre as a tool can choose to perform and represent such laws differently – subversively and even disobediently. Where law creates boundaries around actions, identities and thoughts, aesthetics create boundaries around “spaces and times, of the visible and invisible, of speech and noise[.]”¹⁰⁶ Theatre and performance create a stage (metaphorical or physical) with new boundaries in an enclosed space and time. The theatrical, in particular, “militates against law’s insistence that actions and events are rendered according to the narrative and chronological certainties of the Aristotelian well-made play[.]”¹⁰⁷ Theatre’s stories, because they are dialogic and discursive, allow readers and spectators to draw upon personal experiences and reach their own conclusions, each line offering a lesson, learning, and opportunity for self-reflexivity where they can acknowledge the trajectory of their own lives.¹⁰⁸

While using law as a site of investigation, jurisprudential theatre simultaneously creates theatre as law. This does not mean that theatre replaces state or other legal orders but that jurisprudential theatre offers a new way to study laws and also supplements them with new ways of seeing, doing and being.¹⁰⁹ In other words, jurisprudential theatre serves as a comparative and generative resource in a pluralistic legal system.¹¹⁰

Some say the artist, like the lawyer, has a working knowledge of rules that constrains their work and expands their creativity.¹¹¹ However, an artist has the choice to include and represent information through diverse aesthetics, mediums and narrative arcs, and is not limited to rigid or shared sets of rules. This range of mediums and movement allows a jurisprudential theatre practitioner to use creativity and research as sites of resistance – to actively and morally engage aesthetic forms to reveal power, status and agency by co-constructing, analysing and re-presenting legal events to communities as a method of creating new knowledge and pushing for social change.¹¹² By looking at law from a perspective of aesthetic significance and representing events differently, jurisprudential theatre can transform seemingly banal phenomena into moments that foster understanding and, potentially, the development of empathy.¹¹³

(Pause)

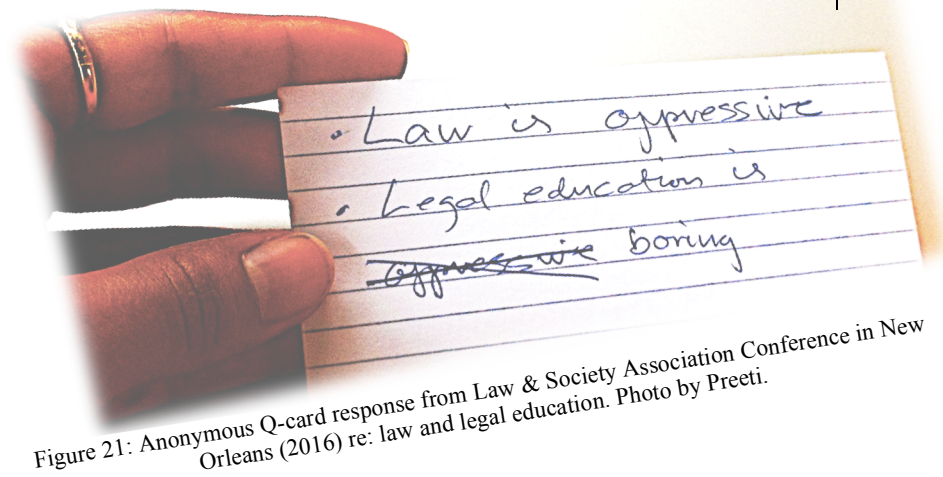


Figure 21: Anonymous Q-card response from Law & Society Association Conference in New Orleans (2016) re: law and legal education. Photo by Preeti.

You Retweeted



Diana B @DianaB37 · Nov 4

View translation

Intervene with Words + Images: Profs Antoinette Gagné & Peter McLaren engaging w/ @Jadoooberry.



To investigate how law is embodied and understand theatre as law, I needed to perform. This chapter thus includes documentation of a piece I performed (not theatre but performance art) while understanding this project, its theory and its methodology.



4



Re-Embodying

Figure 22: *Re-embodiment* (4 Nov 2016). Photo taken and tweeted by @DianaB37; retweeted and edited by Preeti.

- *I'm placed in the Ontario Institute for Studies in Education's library off Bloor Street. I'm stationed beside an Indigenization collage and other artwork, in the midst of the lunch room (nearly no one interacted with me during lunch), in Toronto, a settler city built on Turtle Island, on the traditional territory of the Petun and Huron-Wendat First Nations, the Seneca, and the Mississaugas of the Credit River peoples.*

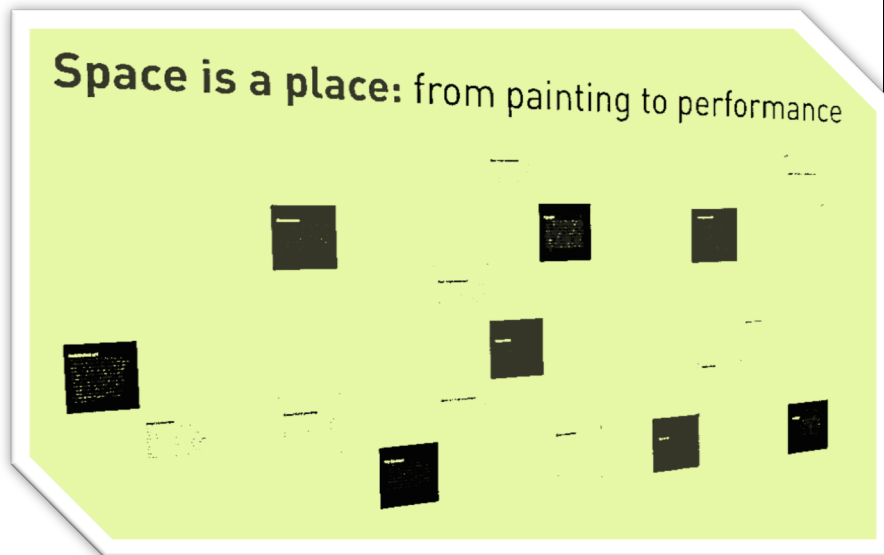


Figure 23: Bristol Museum & Art Gallery (29 Nov 2016). Photo by Preeti.



Aesthetics delimit space and time.¹¹⁴ They make the invisible visible through voice, noise, colour, light, fabric, skin. As human beings, our senses then locate us:

weigh our political stakes through experience,
weigh experience through our politics.¹¹⁵

I've spent years trying to unpack, untangle law and its related traumas, to represent the unrepresentable in some way through art - visual and written - so that it didn't have to live silently in my body. Jurisprudential theatre is where I have arrived.



Figure 24: Selfie taken before *Re-embodying* (4 Nov 2016).

Jurisprudential Theatre's Components

Jurisprudential theatre is a method that uses performance to explore how law(s) lives through experience and in the body. Using four main components (below), this method seeks to create a space where people can explore law aesthetically and affectively through stories sourced from text and the body, including research and personal autobiography. This space offers the playwright, dramaturg, performer and spectator an opportunity to dissolve or imagine dissolving certain predispositions, so that they may be able to envision something new.

To render visible law's invisible doings, particularly the trauma law creates within human bodies or unearned advantages it offers certain bodies, jurisprudential theatre requires legal and autobiographical components.

Trinh Minh Ha suggests allowing "each part of the body to become infused with consciousness" by going beyond rationality and emotional sharing to "instinctual immediacy" which requires relating to the world with immediacy while understanding how instinct and reason go together.¹¹⁶ By rebelling against law's abstractions, jurisprudential theatre – embodied storytelling - offers such immediacy, inherently resisting the coercion of disembodied, legal discourse.¹¹⁷

To offer ways of defying, subverting or imagining beyond existing laws, jurisprudential theatre includes utopian dreaming as part of the playwrighting and play-creating process. Finally to implicate and affect an audience, it requires audience participation or involvement.

1. Autobiographical source;
2. Utopian dreaming;
3. Creative, historical or explanatory investigation of law(s); and
4. Breaking of the fourth wall or audience participation.

I argue that theatre and other art forms offer emancipatory ways of representing knowledge because narrative, self-location, subjective text, storytelling and theatre better match certain realities than academic prose and are accessible to more people. As Sherene Razack argues, stories have the capacity to disrupt law's positivistic approach that authorizes one line between the knower and the thing known – the straight line with no breaks, no curves, no interruptions, no intersections.¹¹⁸ Stories – performed, embodied, told and written – are thus vital to jurisprudential theatre.

Jurisprudential theatre builds empathy and capacity for empathy by connecting people through dynamic stories, preferring a space of learning to a prescriptive one of persuading, telling and commanding. In this way, jurisprudential theatre is a pedagogical device, a way of teaching audiences about the relationship between bodies and law - their bodies and the bodies of others.¹¹⁹

- Mari Matsuda,
"When the First Quail Calls"¹²⁰

Abstraction and detachment are ways out of the discomfort of direct confrontation with the ugliness of oppression. Abstraction, criticized by both feminists and scholars of color, is the method that allows theorists to discuss liberty, property, and rights in the aspirational mode of liberalism with no connection to what those concepts mean in real people's lives. Much in our mainstream intellectual training values abstraction and denigrates nitty-gritty detail. Holding

If affect can be recognized and understood in jurisprudential theatre, the impact of law in and on our bodies becomes tangible, something we can articulate.¹²² Affect describes ways that the body connects with both itself and the world, the intensity between the body and the world.¹²³ It is a relational response to connection but also the production of something new. Although it may proceed through identity and emotion, it is not the same as identity or emotion but rather the intensity that registers in a body prior to such naming, categorization and thought.¹²⁴ Bringing affect into the realm of law through performance offers a new vocabulary to legal realms by making the body relevant, discursive, discussable.¹²⁵

Baruch Spinoza, a Dutch philosopher of Sephardi/Portuguese origin discusses three primary types of affect: pleasure or joy, pain or sorrow, and desire or appetite.¹²¹

Affective responses to law's embodiments, encounters and experiences in jurisprudential theatre allow spectators to begin unpacking internal decision and judgment-making processes. Affect calls forth an audience but also plays a role in constituting the audience. Perhaps 100 people attend a play and 50 identify with the affective quality of a performance - those 50 now constitute a new audience, a newly constituted entity. The performance thus creates and constitute a new communities through affect.¹²⁶

Seeking and developing ways to begin removing or healing the impact of unwanted laws in the body through storytelling, performance, presence and witness is one of jurisprudential theatre's tasks. Foucault might connect this endeavour to genealogy, an "attempt to emancipate historical knowledges" from the subjugation of science and hierarchical orders of knowledge.¹²⁷ Genealogy or not, jurisprudential theatre is about sharing diverse narratives and personal perspectives on law in order to reveal truths about the socio-legal world that are otherwise flattened or silenced in judgments and conventional legal scholarship.¹²⁸

jurisprudential the·a·ter:
 [joor-is-proo-**den**-shuhl THēədər]
 adjective noun

- Theatre about law; law defined broadly, including but not limited to written rules drawn up by governments and judges in legislation and judgments or unsaid rules that guide a society and its behaviours; playwright may also define law as she pleases in the play.
- A play that is performed and contains all four of the following components: autobiographical; utopian; legal and historical research; *and* breaking the fourth wall (imaginary wall between actors and audiences; breaking the wall requires implicating or involving the audience). The four components should not be applied mechanically but used to initiate and guide a storytelling process. Jurisprudential theatre should be “more compelling than objective,”¹²⁹ falling under a stakeholder aesthetic that balances form and content such that aesthetics are at least of equal priority to legal, autobiographical, historical and imaginative source material, if not a 60/40 aesthetic/source relationship.¹³⁰ As Saldaña says, it is crucial “that the *art* comes first; the *message* comes second.”¹³¹
- Theatre as law, as a comparative and generative resource in a pluralistic legal system;¹³² jurisprudential theatre does not replace laws but supplements them with embodied stories that emerge from experience.
- Theatre to study law; a pedagogical device to understand existing law.

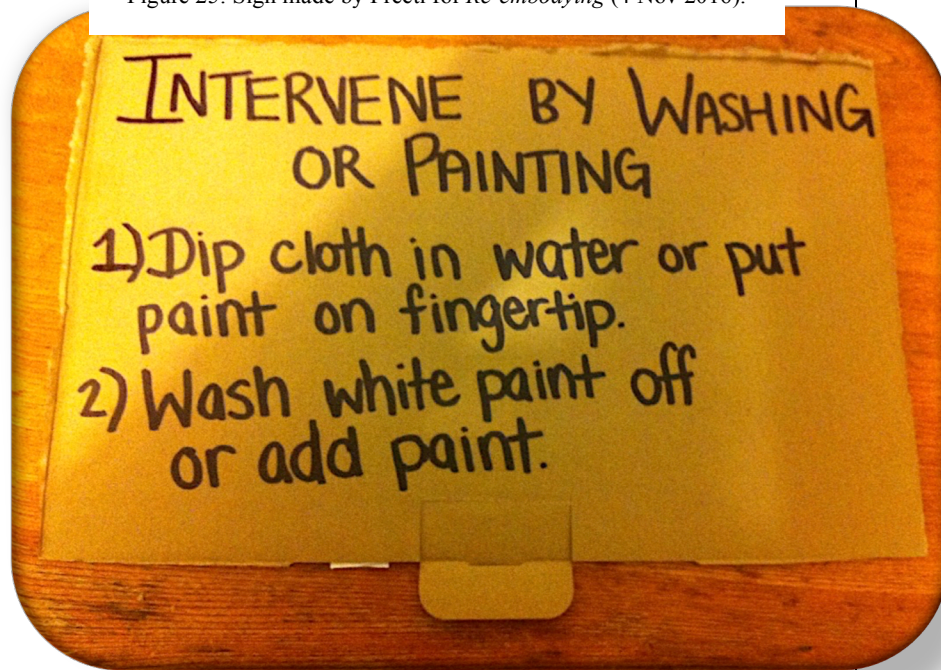
I keep using the word theatre but am showing you an example of performance art without diving into the intricacies and academic views of performance art. Why? *Re-embodiment* offers an experiential example of jurisprudential theatre, most obviously the utopian and audience participation components but also, with subtlety, the autobiographical and legal components.¹³³ In *Re-embodiment*, I prompted spectators to examine their relationships and responses to race via my body, literally asking them to respond to whiteness on my brown skin by painting white on or washing it off. Spectators also had the opportunity to respond in writing via twitter, if that was their preferred mode of interaction. Online, they could post images and videos but also share their experience with others.

Click here for an image:
https://twitter.com/Jadoo_berry/status/795013090773504000

Re-embodiment illustrates how jurisprudential theatre can begin emerging from the body before a play is written. Most significantly, however, it demonstrates the power

of involving spectators in a performance so that more than just the writer and/or performer(s) investigate how their position, actions, worldviews and creativity impact and interact with the community around them.

Figure 25: Sign made by Preeti for *Re-embodying* (4 Nov 2016).



- *The first person to intervene is a white woman. She picks up the white(ness) paint, puts it on her finger, places her finger on my brown arm and draws what feels like a dotted line from my shoulder to my knuckles.*
 - *Only two people lower themselves to touch my foot. One is a white woman. She says nothing, only dips the cloth in water and washes my foot, one line at a time.*

Figure 26: Whiteness paint, prop for *Re-Embodying* (4 Nov 2016). Photo by Preeti.



Rather than putting a direct and critical lens on existing social arrangements, *Re-embodying* instantiated self-reflexivity, allowing participants and observers to examine the meaning of race, evaluate the solutions to ‘racial problems’ and explore their approach to understanding and living with race.¹³⁴

Click link to witness an intervention:

<https://drive.google.com/file/d/OB28cbCqTgqrJaOY5c29STFRmV0k/view?usp=sharing>

Feminist theorist Judith Butler explains that juridical subjects are produced through invisible exclusionary practices that “produce” what they claim to represent.¹³⁵ Law produces the subject – the citizen and non-citizen – then conceals its political operations so that its methods of production are hidden, so that one cannot easily point to the conventions that maintain and sustain the state’s performance, its complex series of citational processes.

1. Autobiographical component

Autobiography is often complex and intersectional, resisting culturally charged, categorized, unified bodies imposed by the body politic and rejecting stable, finite identities.¹³⁶ Through story, autobiography unites hidden embodied knowledge with local memories. This connection establishes historical knowledge of struggles that can then be used tactically to challenge, disturb, and displace law's neat categorizations of rules and bodies but also the fragmentations it can cause within those bodies.¹³⁷

Although the laws of evidence provide that the best evidence is from the source itself (the 'best evidence rule') and anything that isn't directly from the source is deemed less reliable (i.e. hearsay), legal scholarship and judgments rarely use the word "I." Legal judgments are most often written in the third person or passive voice. Such structured and solicited narrative texts offer "the illusion of objective truth," whereas "I" is deemed "an unreliable suspect."¹³⁸ Modernists and post-modernists also tend to dismiss the narrative I "as a form of intellectual narcissism, an unauthorized voice telling unauthorized tales."¹³⁹ Yet autobiography, in fact, allows writers and readers to interrogate how texts are produced, to question how texts and writers are constituted in particular cultures, traditions, worldviews and locations. It is political, historical and valid and holds tremendous potential to challenge the status quo.¹⁴⁰ Autobiography invites readers and spectators to question the authenticity and representativeness of a text or spoken word, as well as the power and authority of the author or presenter.¹⁴¹

The autobiographical component of jurisprudential theatre seeks to create an opening for the writer and reader to profoundly transform themselves through their visions of self, community and governance structures.¹⁴² Coming to terms with one's history and historical relationship to the law is crucial to this transformation: "history, memory, emotional and affectional ties are significant cognitive elements of the construction of critical, self-reflective, feminist selves" as well as "the crafting of oppositional selves and identities[.]"¹⁴³ Delving inward compels human beings to see where we connect and disconnect, to understand how we empathize; in this way, stories can intervene and interrupt societal norms and our habitual ways of knowing.

To ensure this project is not an empirical exercise uniting theory and fact but one that "entertain[s] the claims to attention of local, discontinuous, disqualified, illegitimate knowledges against the claims of a unitary body of theory[.]"¹⁴⁴ it is crucial to elevate knowledge shaped by women, Indigenous peoples, people of colour, people with disabilities and folks who occupy

Reframing the marginal: What if marginality was about being situated in a place of possibility rather than being excluded or unimportant?

other marginalized locations. I am not saying that marginalized locations *all* yield crucial knowledge. However, in a tightly integrated capitalist system, the

standpoint of poor, Indigenous and south/third world women provides one of the most inclusive viewings of inequity and systemic power, and it is crucial to both give up space and create space for these stories and voices.¹⁴⁵

Lived experience is crucial to the autobiographical component of jurisprudential theatre because it offers “telling, iconic moments that call forth the complexities of human life[.]”¹⁴⁶ This does not mean those who do not live in a marginalized location cannot participate in jurisprudential theatre. Instead, I argue that people of relative privilege consider critically how their narrative contributes to law’s existing narratives and the potential for empathy and transformation.¹⁴⁷ For example, if a white person chooses to use jurisprudential theatre to write and perform about race in Canada, the autobiographical component demands meaningful collaboration across difference in order to achieve a product of integrity. In practical terms, this example might require the white person to take a step back, decenter her story and support someone else’s journey. This is not always the case, however. My example focuses on laws about race but the collaborators might come to realize that intersections of gender, ability, sexual orientation or class are as integral to their story and to shifting legal narratives. Meaningful collaboration and the negotiation of power will thus look different in each rendition of jurisprudential theatre.

I am wary of emphasizing minoritarian affiliations in order to create a new mode of theatrical agency. I am also wary of essentializing marginalized solidarities as a strategy for political and symbolic recognition. Yet identity exists. Experienced relationally, the autobiographical “I” is fleshy, moving through a body and the world, the interiority of an individual and materiality beyond the skin, always working within the personal as political whether or not this is acknowledged.¹⁴⁹ In creating space for marginalized voices, jurisprudential theatre seeks to complicate identity and destabilize the analytic utilities of race, class, gender and sexuality while exposing the role of law and power in maintaining such categories.¹⁵⁰

Finally, jurisprudential theatre is not only for legal scholars and lawyers or theatre practitioners and actors (though attention to aesthetic and interest in law are required). It is for anyone who wants to express a relationship between law and their body, about the absence or presence of law in their body; of how particular laws or judgments impact their body or how particular laws that are already in their bodies supercede the laws outside their bodies. The playwright but also the performers must investigate their relationship to a law or set of laws, how that law lives in their body and has impacted their life story. Whether the relationship to law is one of oppression and violence or privilege and entitlement, the playwright must be somehow implicated and aware of that implication, critically cognizant of what voice they speak with and the place from which they speak. Having said that, the play does not have to reflect this story or offer a direct autobiography. As you will see when you click the link in Chapter 4, autobiography can be used to inform the narrative or the narrative arc of the play in more subtle ways.

Little by little it has become clear to me that every great philosophy has been the confession of its maker, as it were his involuntary and unconscious autobiography.

- Friedrich Nietzsche, *Beyond Good and Evil* [emphasis added]¹⁴⁸

While drawing on one’s lived, autobiographical and personal experiences is not novel in theatre, it may offer a new genre of legal scholarship. Continuing from the tradition of feminist and critical race theory scholars such as Patricia Williams who use reality – the details of oppression and their daily interactions with oppression – as a starting point to enter mainstream debates of law and theory, in the next chapter I use details of my experiences as a brown child to connect power and oppression on the playground to the legal and living history of the *Komagata Maru*.¹⁵¹

Was just at the Tate Modern. Went to the third floor to see a performer and participant exhibit. Stood in front of an old Marina Abramovic piece from the 1970s, the one where she has a table covered with objects (books, grapes, wine, knives, axes, cameras, nails, hammers, more), allowing people to use the objects on her body as they wish. Black and white images flash against the wall behind the table: people undress her, draw crosses on her, kiss her. I think of the cross someone washed on my arm during Re-embodiment. The same person washed a circle on my foot, telling me he wasn't Christian but believed there had been a crucifixion of justice: the circle represented a nail in my foot. I remained silent. Listened. Observed. Turned inward. At the Tate, a white woman also witnessing the Abramovic piece said, "That's just wrong." Without turning to see her, I said, "It's performance art. That's how it works. You see what people do." She asked if I was an artist. "Maybe?" I replied, "I just did a performance art piece but I'm also a lawyer." The woman – Carol, a public librarian in Chicago – asked about Re-embodiment. She and her partner Matt, also a librarian, listened with empathy and curiosity. They left my heart full, reminding me that performance lives through story and orality even after it ends. Ephemeral in presence? Maybe. But remembered in story, in the body.

Theatre practitioner Augusto Boal says his lifelong engagements in politics (not party politics) and theatre "seduced" him to make "theatre as politics" rather than "political theatre."¹⁵² I see my motivation to become a lawyer since age five, combined with a lifelong engagement in theatre, as having brought me to jurisprudential theatre – to understanding theatre as jurisprudence. Boal argues legislators should not make law but serve as catalysts through which law is made, with citizens serving as law's makers.¹⁵³ Jurisprudential theatre picks up on this endeavor, investigating how experience constitutes law and conveying it through theatre, offering embodiments of jurisprudence.



Figure 27: *Re-embodiment* (4 Nov 2016). Photo by Tracey Mann.

Eustitia:

I still dream.
If I can dream, perhaps I can love
or at least dream of love,
dream of feeling.
But dreams leave me empty
chasing things I cannot have.
I can provide oppression remedies for others.
but there is no remedy for me
Love is beyond my jurisdiction.

“Storytelling then becomes a lens through which we can envision our way out of cognitive imperialism, where we can create models and mirrors where none existed, and where we can experience the spaces of freedom and justice. Storytelling becomes a space where we can escape the gaze and the cage of the Empire, even if it is just for a few minutes.”

- Leanne Betasamosake Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence*.¹⁵⁴

2. Utopian Component

Laws can capture and imprison our dream worlds – the imaginations of its students, of its subjects, even its creators. This happened regularly when I clerked at the Federal Court of Canada: judicial decisions authorized deporting human beings while those rendering, researching and facilitating the decisions felt conflicted about the process, the determination, the result and the laws but could not imagine any other way of doing things, within or outside of the Court. I witnessed this imprisonment regularly in law school as well: students whose imaginations were quickly replaced with obstacles, rules and regulations that impeded old dreams from continuing and new dreams from being imagined. People not only lost the ability to dream but the time and desire to do it.

Jurisprudential theatre requires a dreaming process, not necessarily to achieve, plan, create or even perform utopia but to explore the idea of it. Feminist theorist, Angelika Bammer says we “need to reconceptualize the utopian in historical, *this-worldly* terms, as a process that involves human agency.”¹⁵⁵ Patrick Johnson argues that only by confronting “the impossibility of imagining utopia” will we uncover “the necessary courage for revolutionary change.”¹⁵⁶ Jurisprudential theatre’s utopian component thus creates space to express, imagine and begin embodying an alternative world or at least begin approaching that which blocks its creators and participants from doing so.¹⁵⁷



Figure 28: Signage in Market Square, Victoria, BC (April 2016). Photo by Preeti.

Jurisprudential theatre’s utopian component asks the playwright, dramaturg, performer(s) and/or audience to begin imagining the “yet unimaginable, but, hopefully, more

progressive futures,” so that those futures may eventually be materialized.¹⁵⁹ This engagement could take the form of a dream scene or it could be the reality of the entire play. It could appear in character dialogue, in conversation

with the audience or as part of a workshop with the playwright and performers. Whatever form this utopian component takes and produces, those involved in the production must carve space and time to dream of a different future or past – different in a small way or a big way, radical or incremental. Rehearsal or writing prompts for such a scene might include:

- I dream of a world where...
- My ideal world would...
- A better world would...
- In a heart-centred world...

Octavia Butler has a few rules for predicting the future that may also serve as useful guideposts:

- Learn from the past;
- Respect the law of consequences: All that you touch/You Change; All that you Change/Changes you; The only lasting truth/Is Change...;
- Be aware of your perspective; and
- Count on surprises.¹⁶⁰

*“...I want to counter the notion of the utopian as unreal with the proposition that **the utopian is powerfully real in the sense that hope and desire (and even fantasies) are real, never ‘merely’ fantasy. It is a force that moves and shapes history.**”*

*- Angelika Bammer, *Partial Visions: Feminism and Utopia in the 1970s*¹⁵⁹*

not require its participants to idealize social interactions or draw on the narrative trope of a small, ideal city.¹⁶¹ Rather the utopian component advocates for “inoclastic” utopianism or “utopias of process” which consider history and dream of a superior society without providing precise measurements, instead working towards resolving conflict with a vaguely defined but somehow concrete destination.¹⁶² A partial vision

The intention of the utopian component is not “blueprint” utopianism or “utopias of spatial form” or even “program utopias” that require working out every detail. This component does

rather than an attempted or alleged comprehensive one is often “most able to see clearly[, i]n the sense that the gaze that encompasses less is often able to grasp more.”¹⁶³ Fredric Jameson might describe this component as an “omnipresent utopian impulse,” obscure and various – based on theory, reform, and individual building.¹⁶⁴

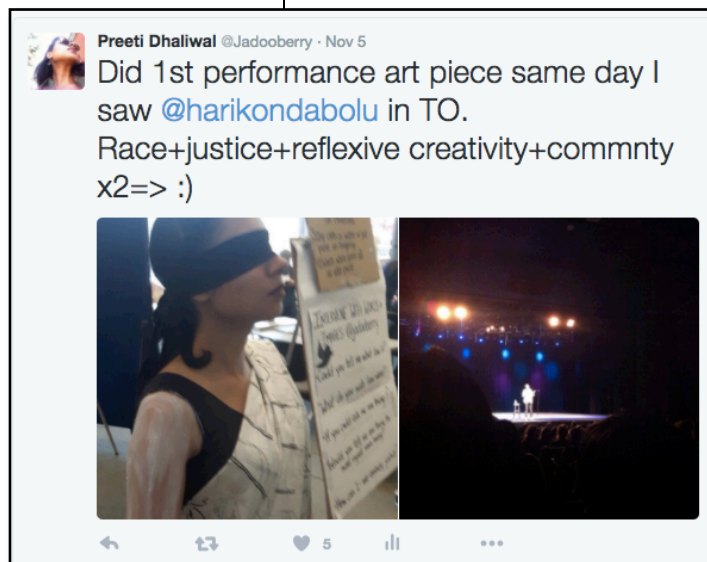


Figure 29: Screenshot of my own tweet (which Hari Kondabolu, the comedian, liked!)

- *“I’m a white woman,” she says (no one knows I can see them), “I’m trying to wash your arm but the white keeps spreading...I guess that’s what I’m supposed to be thinking about.”*



Figure 31: *Re-embodiment* (4 Nov 2016). Photo by @Nedical, edited by Preeti.

Washing my arm, this white woman attempted to imagine something different, something utopian but instead opened a negative critical space, unimagined and perhaps unimaginable.¹⁶⁵ She then showed willingness to think about that space so that a more complex and progressive future understanding might be realized. By confronting the impossibility of easily creating utopia, perhaps this woman might now have the courage to reach deeper racial understanding, empathy and revolutionary change.¹⁶⁶

Figure 30: *Re-embodiment*, sword & scales (props). Photo by Preeti.

Click on the link to witness what I could hear and feel:
<https://drive.google.com/file/d/OB28cbCqTgqrJU1VLmQtMWoyT1k/view?usp=sharing>

At the heart of this piece is conflict. Dissidence. Trying to fix, alter, make utopian. An inability to do so. A contingency. A crack. An opening. A break in possibility. A fractured attempt that offers new possibilities after one understands that the answer isn't simple

- *A brown woman picks up the whiteness paint after a white woman with a British accent finishes washing the top half of my arm. The brown woman smears white onto the entire washed area. “That’s what happens in real life,” she says, “Maybe I’m cynical.”*

Utopia is not a destination.

Couton and Lopez argue that movement is central to utopian traditions, that the power of utopianism in the modern era lies in its ability to represent the tension between movement and place, the very tension that marks social transformation in the modern era.¹⁶⁸ Rather than envisioning ‘a utopia,’ jurisprudential theatre seeks to replace fixed ideas with an “idea of ‘the utopian’ as an *approach toward*, a movement beyond set limits into the realm of the not-yet-set.”¹⁶⁹ Since aspirations of a better society – of greater equality and respect for one another, inclusion and justice – require change, critical thinking is an inherent and necessary part of jurisprudential theatre’s utopian component.¹⁷⁰

As with autobiography, utopian visions need not be translated directly into the play but must inform its basis. Replacing direct representation with imaginative possibilities requires shifting from real space to performance space, into what Augusto Boal calls the “oneiric” dimension.¹⁷¹ Rather than observing, the dreamer “passes through the looking-glass” and “penetrates into her own projections” so that “everything merges and mixes together, anything is possible.”¹⁷²

Like Boal’s theories of theatre, postcolonial theories advocate new ways of imagining human life. Although Canada is not a post-colonial state, postcolonial theory is relevant to this project’s rendition of jurisprudential theatre and explorations of race. Political scientist, Achille Mbembe, describes postcolonial theory as an interpretive archive and method which seeks to radically unmask and deconstruct “Western hegemony in the field of the humanities and other disciplines.”¹⁷³ Similar to the intention behind *Re-embodying*, post-colonial theory offers “a way of imagining a human life that is a life beyond merely racialized existence.”¹⁷⁴ To enter or imagine “other, unprecedented configurations of human experience, hope and possibilities,” postcolonial theory requires developing a “transformative relationship” with the past.¹⁷⁵ Jurisprudential theatre strives to develop this transformative relationship and resist historical legal erasures through cultural expression, creativity and practicing new embodied ways of inhabiting space with one another.¹⁷⁶

Utopian performatives persuade
us
that beyond this “now” of material oppression and unequal
power relations
lives
a future that might be different,
one-whose potential we can feel as we’re seared by the
promise of a present that gestures toward a better later.
The affective and ideological “doings” we see and feel
demonstrated in utopian performatives also critically
rehearse civic engagement that could be effective in the
wider public and political realm.

Jill Dolan, *Utopia in Performance: Finding Hope at the Theater*¹⁶⁷

- *An Indigenous man approaches me and says he won't tweet. He comes from an oral tradition so he will instead tell me the secret to making myself - Eustitia, an embodiment of justice - more loving. I won't write that lesson here but if you ask, I might tell you.*

- *I also won't write the one from an Anishinaabe woman who told me what law is in her culture, what the L stands for, what the A stands for, what the W stands for.*

Click below and Indigenous feminist writer Lee Maracle will tell you how Indigenous laws offer a counter to colonial immigration laws. She will share with you what “we have to get...very clear in our minds, and in our hearts, and in our bodies, and move with...”¹⁷⁷

<https://drive.google.com/file/d/OB28cbCqTgqrJU1VLtmQtMWoyTIk/view?usp=sharing>

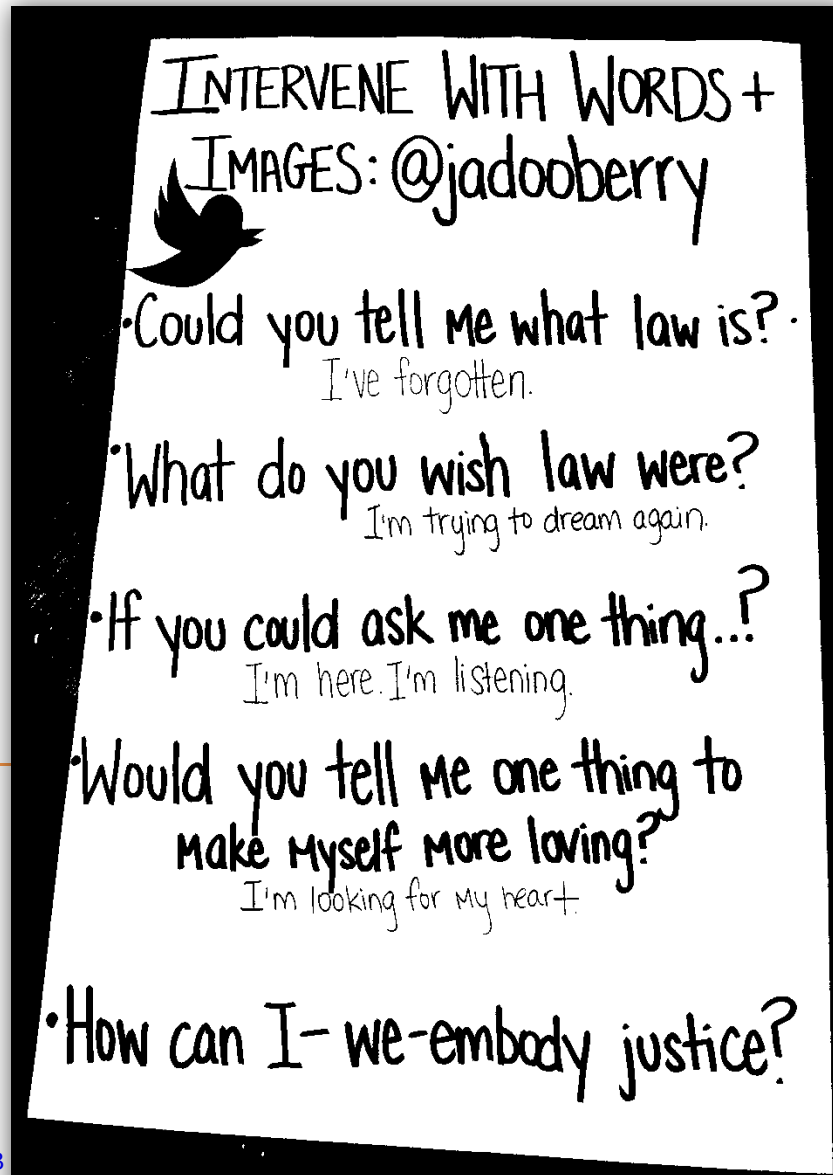


Figure 32: Signage for *Re-embodiyng*. Photo and sign by Preeti, words edited by Martin Lukacs.

- *An Indigenous man looks at the washing cloths and says, “Those colours are significant.”*

Participants could wash me with red, white, black or yellow cloth. These four colours appear on the Medicine Wheel. When I questioned whether this accidental alignment would appear as an appropriation or symbolism, two friends (one Cree, the other white, both deeply engaged with Indigenous law and politics) said it would further represent cleansing. Yet I am still wary of promoting simplistic calls for racial unity between migrants of colour like myself and Indigenous people, ones that work to conceal my complicity in settler-colonialism and to “obscure the matrix of differential racial power within settler colonialism.”¹⁷⁸ I must therefore continue developing ways for *Re-embodiyng* to educate participants about Indigenous histories of the lands I perform on.¹⁷⁹

3. Legal Component

In jurisprudential theatre's endeavour, imagination and story are not about pursuing "the" truth but "a" truth, perhaps a new one – a fictional or fantastical one – but one that opens people's eyes, minds and hearts in new ways.¹⁸⁰ In this way, jurisprudential theatre does not proclaim "the" truth about law but generates personal stories and a variety of truths, acknowledging that facts are the artist's way of seeing things. The work – written, performed, personal and scholarly – may exaggerate subjectivity to reveal the impossibility of objectivity. After investigating lived and legal realities, jurisprudential theatre practitioners may even choose to distort and exaggerate them in order to please, activate or even disturb the spectator.¹⁸¹

Jurisprudential theatre asks the artist-scholar, artist-lawyer or artist-person for autobiography and performance in an attempt to bridge the gap between daily social interactions and legal systems because the stories we tell about ourselves, our lives, our society, and our laws are constitutive.

Linda Tuhiwai Smith says that coming to know the past is part of decolonization because holding alternate histories means holding alternate knowledges, and these alternative knowledges can form the basis of alternative ways of doing things.¹⁸² In this way, the stories of jurisprudential theatre constitute the lives and laws they explore while interpreting them.



Figure 33: Newspaper cutting (1912-14),
Museum of London Suffragettes Exhibit.
Photo by Preeti (Nov 2016).

Jurisprudential theatre accepts as "law" what others may not consider to be or immediately understand as law. As mentioned earlier in this chapter, a variety of laws can be researched in jurisprudential theatre: blackletter, convention, case law, legislation or cultural, religious and other legal orders. The law may be repealed, in force or in draft form. It might be written or unwritten. It may be oral, passed down in the form of a story or gestured and passed through ceremony. Jurisprudential theatre embraces that for something to be law, it need only be a norm that a community is aware of and follows (or followed) because it is or could somehow be enforced. Given that laws or ways of being are regulated in different ways amongst different communities, enforced does not necessarily mean physical or military force. This theatre practice thus takes a dynamic and expansive approach towards the meaning of law.

As an aesthetic practice, jurisprudential theatre seeks to express injustice but also imagine and rehearse for justice by enacting new pathways that laws, in their many forms, do not yet offer or perhaps block and limit. Rancière argues that aesthetics possess "the capacity to repurpose legal discourse in ways that stage new forms of justice that simply cannot exist with an official legal context."¹⁸³ Using imagination, autobiography, the body and legal research to generate data allows jurisprudential theatre to resist binaries of law and art, writing and performance, power and oppression by practicing new ways of doing, intervening and making visible.¹⁸⁴ Where state laws often focus on particularities in order to instrumentalize them - cage, categorize and authoritatively universalize, abstract and detach – the arts capture particular, material experiences. Theatre can retain specificity, offering space to understand, form opinions, see intersections and rely on a different logic than law, one where affect matters.

4. Breaking the 4th Wall: Audience Involvement

- Before, during and after *Re-embodying*, people tell me I'm brave.

"Why?" I ask.

"Letting strangers touch you," they reply, "I wouldn't want strangers touching me."

Because it is embodied, performance is an anti-colonial method. With conquest in Canada and other countries, amongst many oppressions came the outlawing of Indigenous ceremonies, dances, rituals, ways of life such as cooking and language – ways that preserved community identities, laws and memories. Such non-written forms were pejoratively associated with emotion, with the feminine and with Indigenous peoples. With colonization, writing – associated with "reason," with "masculine" and with elite power – was suddenly legitimized over other systems, epistemic and mnemonic.¹⁸⁵ When embodied practices are outlawed and devalued, so too are the lessons, laws and knowledge they hold. Jurisprudential theatre thus can also be used as a method of retrieval, to recommunicate laws that have been lost, taken, outlawed or stolen by re-embodying them.



Figure 34: *Re-embodying* (4 Nov 2016). Photo by Hussan Syed.

- The second person who touches me is a young brown woman. She takes a piece of red towel, places it in the fold of my sari (atop my left breast) and says, "It's her heart."

Politics rely on what is said about what is seen – on who has the ability to see and the privilege to speak.¹⁸⁶ By making perceptions, experiences and interactions visible, *Re-embodying* created space to examine not only how race is inscribed on my body but how whiteness, love and intervention take place in law. Traditionally, the "theatrical frame" permits "spectators to enjoy deep feelings without feeling compelled either to intervene or to avoid witnessing the actions that arouse those feelings."¹⁸⁷ Performance, though not immune to the reproduction of political systems of visibility, offers space for

different voices to speak.¹⁸⁸ *Re-embodying* illustrated how jurisprudential theatre could be used to perform culture differently by creating space to intervene and interact differently, first on stage and then, perhaps, off.¹⁸⁹

- No white men touch me, though one approaches me after: “That was incredible...It was...I was here the whole time and ... it was just ... incredible.” Sometimes it takes time to understand what something means to us. I was touched by his words, his awe, his unfinished reflection even though he didn’t touch me.

What would you have done? Or not done? Would you have intervened? Can you really know?

- Another white man tells me he saw me. When I ask why he didn’t intervene, he says he didn’t know what his place was.

I’m attentive to apathy that leads to inaction, empathy that prevents intervention and fetishistic voyeurism that reproduces the status quo. E. Patrick Johnson asserts that performance “is a vehicle through which the Other is seen and not seen,” where voyeurs or spectators or audience members’ lenses are “necessarily predicated on [their] power and privilege.”¹⁹⁰ Patricia Williams also cautions of the “long tradition of voyeurism as a means of putting culture not just on display but at a condescending distance.”¹⁹¹ I’m attentive to the potential of reiterating shallow, unself-reflexive portrayals of brown bodies.

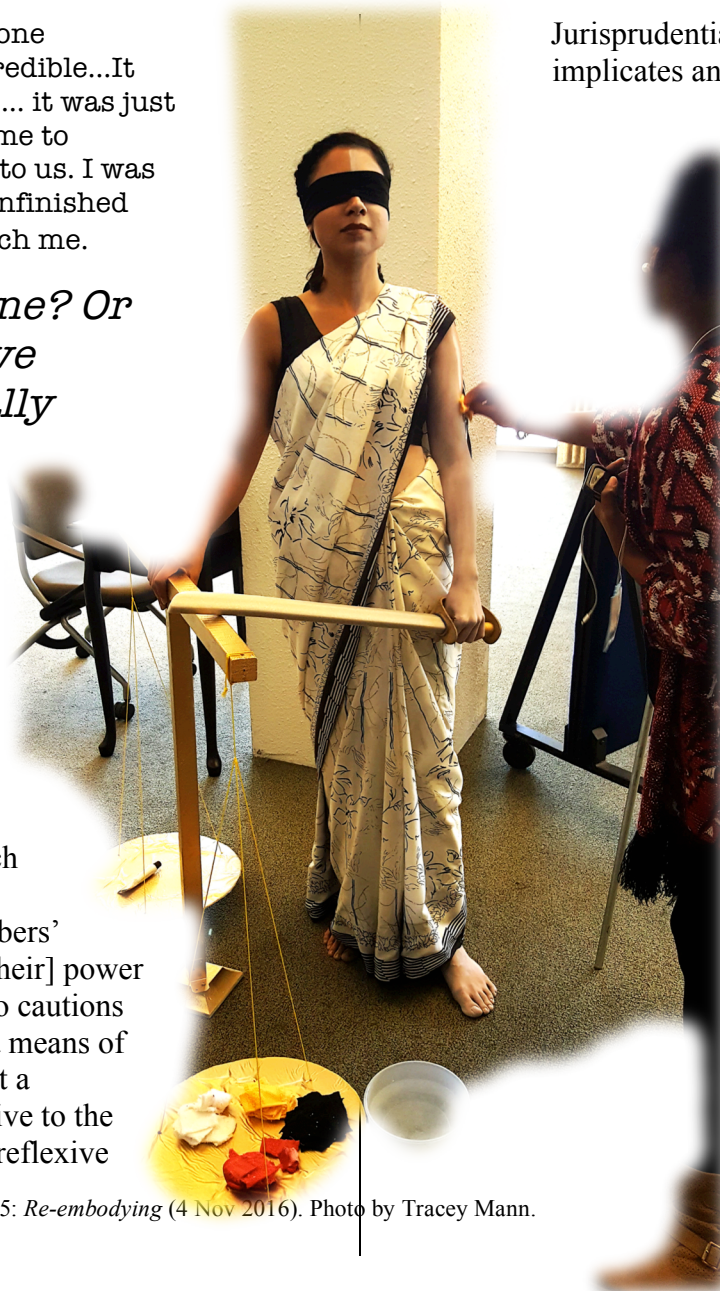


Figure 35: *Re-embodiment* (4 Nov 2016). Photo by Tracey Mann.

Jurisprudential theatre acknowledges but also implicates and includes the audience. Rather than pretending there is an artificial boundary between the performer(s) and audience, the spectators are considered part of the performance. There should be at least one opportunity to change a scene or participate in the play so that the performance can be disrupted through its own aesthetic.

By involving spectators, *Re-embodiment* demonstrated how performance can move away from a heavily plotted drama where the dramatist makes neat connections, and towards the primacy of agency. Participation allowed spectators to delve into the deep structures of society to witness and experience how law operates unconsciously through human interactions. Breaking the fourth wall thus moves jurisprudential theatre beyond traditional forms of representational theatre so that plays emerging from this method can negotiate theatrical and legal aesthetics in a dialectical manner where spectators, performers and playwrights all participate in envisioning new ways of understanding law.¹⁹²

In jurisprudential theatre, the performer(s) should follow the script's directions for audience involvement but can also improvise additional ways to build a relationship of invitation and participation with spectators. Audience desires and interventions do not have to change the play entirely, though they can (for those familiar with Augusto Boal's *Theatre of the Oppressed* or David Diamond's *Theatre for Living*, the interaction in jurisprudential theatre may or may not be as involved).¹⁹³ The "dramaturg facilitates activities that engender a deeper understanding of our culture, society, and communities,"¹⁹⁴ but it is up to the play's writer, performers and directors to determine what level of interaction and intervention is desirable and suitable for their purposes and context (until the performance – that's where the power shifts and the audience takes some control).

Bertolt Brecht's "alienation effect" or "distancing effect" (as translated from *verfremdungseffekt*) is one method to involve the audience.¹⁹⁵ This effect seeks to make the familiar strange in order to cast something people see every day in a different light, or at least offer the possibility of having it seen differently. In other words, the familiar must be offered and then something must be done so that it may be seen differently. This difference forces the audience into critical distance and critical reflection. The distance does not replace feeling but sits alongside it, creating space for affect to be discovered, recognized and named.¹⁹⁶

To continue breaking the fourth wall after the performance, plays should have at least one "talkback session" during a performance run. This requires holding time and space for performer(s) and/or directors and/or crew to dialogue with the audience after the play has ended. The talkback may involve a change or intervention, such as re-enacting a particular scene and asking audience members to step in and change it (see Augusto Boal's methods or applied theatre practices for details or more techniques).¹⁹⁷ It may also be a simple discussion where the audience and performers can ask one another questions and share feedback such as appreciation or critique. If those involved in writing, performing and producing jurisprudential theatre fail to create space for feedback and reflexive listening, then they are not doing the work jurisprudential theatre has the potential to do.



Figure 36: Spectators at *Re-embodying* (4 Nov 2016). Photo by Tracey Mann.

The feedback process in and of itself cannot assure that power is fairly distributed but steps can be taken to support a more just and inclusive speaking environment. Before opening the floor for questions, the facilitator should provide guidelines that support a diversity of voices being heard. The facilitator may, for example, ask that everyone be conscious of who speaks, of how much time they use and who it is taking away from. The facilitator might also describe what sorts of comments and questions will be accepted, notify people that they may be cut off, and set precedent for the discussion by making explicit that the first question heard will be from a woman or person of colour. If no one raises their hand at first, the facilitator should be comfortable waiting for individuals to formulate feedback in order to comply with their guidelines. In addition to this talkback session, performers may mingle with spectators in the lobby after the production, and directors may wish to offer paper or an online portal for written responses.

With the information gathered, those who create and perform jurisprudential theatre should attempt to work through the differences between the story that was told and the story they hoped to tell. Pooja Parmar acknowledges that we may not always be able to see the world as the other or re-present it accurately “[b]ut it is always possible to try.”¹⁹⁸ Jurisprudential theatre can fall prey to existing power frameworks and reinforce ethnocentric, essentialist thinking at times, or reiterate new or old forms of exoticism in certain scenes.¹⁹⁹ Translating feedback into performative changes is thus a vital part of the jurisprudential theatre process. According to Gayatri Spivak, ethical translations are acts where we hear to respond and we listen with care and patience.²⁰⁰ In jurisprudential theatre, this care requires practicing new ways to reach the desired transformative aesthetic experience.

Saldaña argues that the lives of playwrights and those involved in producing a play often change in minor or major ways as a result of participation but that individual audience members may not (and rarely do) change at all.²⁰¹ Applauding the goal of social change and accepting that some audience members leave the room slightly more informed or motivated to investigate mentioned subject matter, he nevertheless believes audience change is minimal.²⁰² I agree with Saldaña that audience responses are impacted by a plethora of variables, such as:

acting quality, audience member alertness, audibility and decoding of language, seating proximity to the stage, gender and age of the protagonist and audience member, physical attractiveness of the actors, amount of previous theatre viewing experience, perceived similarities with characters and action, an individual’s capacity to sympathize and empathize and so on.²⁰³

I disagree with Saldaña’s views on social change, however. The possibilities in an interactive and participatory performance are different than traditional theatre.

Do you remember the white woman who tried to wash the paint off of me but noticed that it kept spreading? After performing this act on my body and experiencing the absence of change, she was surprised, and said, “I guess this is what I’m supposed to think about.” By stepping outside theatrical convention, spectators who intervene not only become participants but social deviants who accept an offer to play and/or disrupt a scene and space where social convention prescribes non-intervention.²⁰⁴ In doing so, jurisprudential theatre offers the possibility of altering ways of seeing, thinking, feeling and doing. While these micro-changes may not change the course of current events, they can and do alter people’s perspectives and empathic capacities.

"a rediscovery of ritual, not law, constituted by neighbors, not judges, informs this 'village' aesthetic as personally meaningful. The metaphors of experience and storytelling **displace the language of rules and facts**. A communal gathering of residents preempts the calculated courtroom trial. The concerned search for 'authentic' justice replaces the mental exercise of legal manipulation."

Bruce Arrigo, "Rethinking the Language of Law, Justice, and Community: Postmodern Feminist Jurisprudence" [emphasis added]²⁰⁵



- *In the second hour of Re-embodiment, I turn inward, focusing on five step breathing, bringing all bodily, spiritual, artistic and legal lessons I can into one moment. I absorb my surroundings and withstand them. I hold still and perform, offering presence and experience. I peer through the black cloth covering my eyes intermittently, bearing occasional witness while being witnessed.*

Re-embodiment

As a ritualized, reiterative and formalized behaviour, embodied memory does not disappear. While I have recorded this chapter in writing and it will enter written archives, the archive has not captured each individual experience or conversation that resulted from *Re-embodiment*. Those embodied experiences, like those that can emerge in jurisprudential theatre (and will emerge in Chapter 4), instead replicate through their own processes of selection and memorization, structures and codes.²⁰⁶

Embodiment and performance offer new ways of understanding ourselves in relation to law and one another by creating new forms for knowledge. By giving new meaning to law through space, time, silence, movement, voice, images, dialogue and sound,²⁰⁷ jurisprudential theatre explores places where "social structure" (the law) and "cultural representation" (performance aesthetics) become most deeply entangled on the body – human bodies, law's bodies, justice's bodies.²⁰⁸ Trauma caused by law can be unrepresentable, and often inhibits people from fully expressing themselves. Theatre offers a counter-space to play and become more fully self-expressed.²⁰⁹

Law needs performance because deconstructing and analysing often leaves legal agents and scholars with little to build from, spiralling through the same thoughts with minimal agency. The imaginative reach of the arts can resist the instrumentalism of legal and political institutions and potentially provide them with alternative visions, perhaps even aspirational visions.²¹⁰

The performance of jurisprudential theatre brings law and the body into the same sphere. It uses aesthetics to re-envision and engage with law in new ways, such as subversion and disruption or interruption and conversation. The presence of performers and audiences allows for affect, relationship and dialogue within and between groups, laws and stories but also between those staging the production, the audience and the institution producing the piece. Like argument and written word, performance is thus another rhetorical device, one that asks audiences to delve inwards, and connect to both themselves, the other and surrounding communities in order to reach new conclusions.

By filling affective spaces that law neglects, jurisprudential theatre seeks to build an alternate, critical, legal archive. Whether internal and embodied or external and material, this archive assists in the study of law. It constitutes an alternate jurisprudence, sometimes complimentary to existing law and jurisprudence and sometimes subversive, but always a lens to view, theorize and philosophize about law in new ways.

...every ticket I buy contains a certain promise.

- Jill Dolan, *Utopia in Performance: Finding Hope at the Theater*²¹¹

Finally, by creating a space where spectators, playwrights and performers have the opportunity to connect with the aesthetic complexities of an otherwise hidden past, jurisprudential theatre offers imaginative and embodied possibilities of a more just future.²¹² Experimental writing and performance such as jurisprudential theatre “demand our attention as a way to help fill holes in our fragmented society.”²¹³ By increasing the number of ways people can communicate thoughts about law, jurisprudential theatre increases the number of voices in the room, shifts authority and alters people’s empathic capacities through storied exposure.

The next chapter examines two plays that resist the legal and historical erasure of the *Komagata Maru* and its passengers. The plays encompass elements of jurisprudential theatre, the legal historical component in particular but also the utopian and autobiographical elements with more subtlety. Both plays invite their audiences to consider race and whiteness in ways that Prime Minister Justin Trudeau’s apology for the treatment of *Komagata Maru* passengers failed to do. In revealing the racist legal underpinnings that informed the judicial decision justifying the deportation of the ship’s passengers, these plays supplement legal history while offering performed stories as law.

Need a reading break? Click below for one last participant-posted video of *Re-embodiment*:
<https://twitter.com/DianaB37/status/794622022420721664>

⁵⁹ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999) at 29.

⁶⁰ *Ibid* at 39.

⁶¹ See *ibid*.

⁶² *Ibid*; see for e.g. see also Carol A Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood Publishing, 1999).

⁶³ *Ibid*.

⁶⁴ (1991) 1:4 Yale Journal of Law and Feminism at 1.

⁶⁵ Chris Abani, “The Face: Cartography of the Void” *WarScapes* (29 February 2016), online: Warscapes <<http://www.warscapes.com/literature/face-cartography-void>>.

⁶⁶ Smith, *supra* note 59 at 28.

⁶⁷ Barbara Kirshen-Blatt Gimblett, “Performance Studies” in Henry Bial, ed, *The Performance Studies Reader* (London: Routledge, 2004) at 47.

⁶⁸ Elin Diamond, “Introduction” in Elin Diamond, ed, *Performance and Cultural Politics* (London: Routledge, 1996) at 5.

⁶⁹ “Signature Event Context” in *Limited Inc.* (Evanston: Northwestern UP, 1988) 1.

⁷⁰ *Ibid*.

⁷¹ See J. L. Austin, “Performative Utterances” in *Philosophical Papers* (Oxford: Clarendon Press, 1961) at 237.

⁷² *Ibid* at 235-6. Austin would not, for example, consider a legally wedded person saying “I divorce you” to be performative, even if the person and their partner subsequently separated homes and started different relationships, or if that statement were accepted by a small group of people (238). In Austin’s view, one cannot divorce another through mere utterance because such a convention does not exist and is not accepted. The unstated presumption underlying this explanation is that divorce is only legitimate if sanctioned by the state; yet even without “the appropriate context” of a courtroom and convention backed by law, is this utterance “merely saying something” (235, 238)? Is it not also *doing* something? Do the feelings experienced by both individuals involved, a surrounding community’s

belief and subsequent actions of separation in response to the statement not render the utterance performative, even if it is not legal?

⁷³ *Ibid* at 238-9.

⁷⁴ Judith Butler, *Bodies that Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993) at xii.

⁷⁵ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999) at xiv.

⁷⁶ Butler, *ibid* at xiv.

⁷⁷ *Ibid*.

⁷⁸ *Ibid* at xv.

⁷⁹ See Johnny Saldaña, "This is not a performance text" (2006) 12:6 *Qualitative Inquiry* 1091.

⁸⁰ See Ronald J. Pelias, "Performative writing as scholarship: An apology, an argument, an anecdote" (2005) 5:4 *Cultural Studies & Critical Methodologies* 415 (Sagepub).

⁸¹ Mari Matsuda, "When the First Quail Calls: Multiple Consciousness as Jurisprudential Method" (1989) 11:7 *Women's Rights Law Reporter* 8.

⁸² Junot Diaz, "Second Person is Unbearable" (2015) YouTube. (25 April 2016), online: <https://www.youtube.com/watch?v=vDE3_XvS9ok>.

⁸³ *Ibid*.

⁸⁴ Pelias, *supra* note 80.

⁸⁵ *Between the World and Me* (New York: Spiegel & Grau, 2015).

⁸⁶ The separation between body and mind is a cultural construct, just as the distinction between sense and reason is. It was heavily Christianized by Aquinas and then developed in academia by Descartes who entrenched the dualism that would relate the body to physiology and the mind to psychology: see Linda Tuhiwai Smith, *supra* note 59 at 48.

⁸⁷ Matsuda, *supra* note 81 at 7-8.

⁸⁸ Abby Wilkerson, "Embodiment" in *Keywords for Disability Studies*, Rachel Adams, Benjamin Reiss, David Serlin, eds (New York: New York University Press, 2015) 67 at 67.

⁸⁹ See Augusto Boal, *The Rainbow of Desire: The Boal Method of Theatre and Therapy*, translated by Adrian Jackson (New York: Routledge:

1995) at 42-45. Boal speaks of "metaxis" - the state of belonging completely and simultaneously to two different, autonomous worlds: the image of reality and the reality of the image" (42). This state allows actors to move in and out of the story, to critically comment on the character and story while living in the story and performing the character.

⁹⁰ Wilkerson, *supra* note 88 at 68. For original discussion on "mind-body dualism," see Rene Descartes, *The Philosophical Writings of Descartes*, 3 vols, translated by John Cottingham et al (Cambridge: Cambridge University Press, 1984-1991). This anthology is the standard edition of Descartes' works and correspondences, including his thesis which is now referred to as "mind-body dualism." Descartes argues that the mind is different and distinct from the body such that one can exist without the other); for original work in French, see Rene Descartes, *Oeuvres de Descartes*, 11 vols, Charles Adam and Paul Tannery, eds (Paris: Vrin, 1974-1989). Compare Cynthia F. Berrol, "The neurophysiologic basis of the mind-body connection in dance/movement therapy" (1992) 14:1 *American Journal of Dance Therapy* at 19-29. Berrol discusses the premise of dance/movement therapy which is that a change in the mind produces a corollary change in the body and vice versa. To investigate this relationship in law, see also Michael S. Pardo & Dennis Patterson, *Minds, Brains, and Law: The Conceptual Foundations of Law and Neuroscience* (Oxford: Oxford University Press, 2013).

⁹¹ Wilkerson, *supra* note 88 at 67.

⁹² Jennie Duguay & Kara Taylor, "Can Broken be Whole" (15 November 2016), online: *Guts* (Issue 7) <<http://gutsmagazine.ca/broken/>>.

⁹³ *Ibid*.

⁹⁴ See Keith Alexander Bryant, "Performance and Pedagogy" in Madison D. Soyini & Judith Hamera, eds, *The Sage Handbook of Performance Studies* (Thousand Oaks: Sage, 2006) at 253; see also Joshua Takano Chambers-Letson, *A Race So Different: The Making of Asian Americans in Law and Performance* (New York: NYU Press, 2013) at 6-8.

⁹⁵ Wilkerson, *supra* note 88 at 68; see also Gail Weiss. *Body Images: Embodiment as Intercorporeality*. (London: Routledge, 1999).

⁹⁶ Weiss, *ibid*; see also Wilkerson, *supra* note 88 at 69.

⁹⁷ See Dwight Conquergood, on "Rethinking ethnography: towards a critical cultural politics" in Madison D. Soyini & Judith Hamera, eds, *The*

Sage Handbook of Performance Studies (Thousand Oaks: Sage, 2006) at 358-9.

⁹⁸ “All my relations” is a phrase my friend and colleague Darcy Lindberg (who identifies as Cree) uses. Culturally, it resonates with how I was raised though it was not a concept I had ever tried to translate from Punjabi to English.

⁹⁹ See generally Coates, *supra* note 85; Tracey Lindberg, “Guest lecture on *Birdie*,” Indigenous Legal Theory Seminar (February 2016), University of Victoria, Victoria, BC, Lecture [unpublished].

¹⁰⁰ Coates, *ibid* (I listened to this book on Audible while traveling in London. I wrote the quotes down while on buses, rewinding and replaying, rewinding and replaying. For this reason, I have no page numbers for you).

¹⁰¹ Tim Prentki, “On the Nature of Dramatic Process: Rehearsing for Revolutions?” 20th Annual Summer Drama Education/Applied Theatre Institute (9 May 2016). University of Victoria, Victoria, Lecture [unpublished].

¹⁰² Norman K Denzin, “The call to performance” (2003) 26:1 Symbolic Interaction 187 (Jstor) at 187-8.

¹⁰³ Jacques Rancière, *The Politics of Aesthetics*, trans Gabriel Rockhill (New York: Bloomsbury Academic, 2006) at 10.

¹⁰⁴ *Ibid* at 13.

¹⁰⁵ See generally Orit Kamir, *Framed: Women in Law and Film*. (Durham: Duke University Press, 2006) at xi-xii; Patricia J Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge: Harvard University Press, 1991); Colleen Sheppard, *Inclusive Equality: Relational Dimensions of Systemic Discrimination In Canada* (Montreal: McGill-Queen's University Press, 2010).

¹⁰⁶ Rancière, *supra* note 103 at 13.

¹⁰⁷ Marett Leiboff, “Law, Muteness and the Theatrical” (2010) 14:21 Law Text Culture at 389.

¹⁰⁸ Lynn C. Miller & Jacqueline Taylor, “Constructed self: strategic and aesthetic choices autobiographical performance” in Madison D. Soyini & Judith Hamera, eds, *The Sage Handbook of Performance Studies* (Thousand Oaks: Sage, 2006) at 170.

¹⁰⁹ *Ibid*.

¹¹⁰ See especially also Martha-Marie Kleinhans & Roderick A. Macdonald, “What is a *Critical* Legal Pluralism?” (1997) 12:2 Canadian Journal of Law and Society 25 (in this article, critical legal pluralism imagines subjects as “law inventing” rather than only “law abiding”); see also Sally Engle Merry, “Legal Pluralism” (1988) 22:5 Law Society Review 869 (Jstor); see generally Adelle Blackett, “Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct” (2001) 8:2 Indiana Journal of Global Studies 401.

¹¹¹ C.f. Adam Gearey, *Law and Aesthetics* (Oxford: Hart Publishing, 2001). Gearey suggests aesthetics offer new meaning to law’s rule-based nature but sites similarities between the artist and the lawyer based on both requiring knowledge of certain rules and then working creatively within them. See also Alison Young, *Judging The Image: Art, Value, Law* (New York: Routledge, 2005) at 10-11.

¹¹² See generally Conquergood, *supra* note 97 at 358-9.

¹¹³ See generally Peter O’Connor, *Applied Theatre: Research: Radical Departures* (London: Bloomsbury Methuen Drama, 2015) at 22-23.

¹¹⁴ See Rancière, *supra* note 103 at 12-13.

¹¹⁵ *Ibid* at 13.

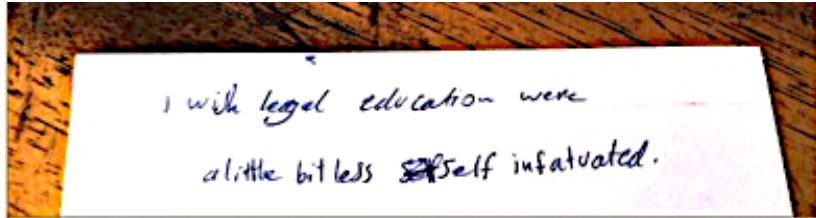
¹¹⁶ Cited in Sherene Razack, *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998) at 53.

¹¹⁷ Michel Foucault, “Two lectures” in Colin Gordon, ed, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, trans Colin Gordon et al (New York: Pantheon, 1980) at 85.

¹¹⁸ Razack, *supra* note 116 at 36. Razack argues story and narrative disrupt and interrogates law’s desire for a straight line between the knower and the known by providing context and particularities.

¹¹⁹ See e.g. Gillian Calder, “Guantanamo: Using a Play-reading to Teach Law” (2010) 142 *Canadian Theatre Review* 44; see also Victoria Brittain & Gillian Slovo, *Guantanamo: Honour Bound to Defend Freedom*, taken from spoken evidence (London: Oberon Books, 2004); see also Gillian Calder, “Performance, Pedagogy and Law: Theatre of the Oppressed in the Legal Classroom” in Maksymilian Del Mar & Zenon Bankowski, eds, *The Moral Imagination and the Legal Life: Beyond Text in Legal Education* (Surrey, England: Ashgate Publishing, 2013); see also Suzanne Bouclin & Gillian

Calder & Sharon Cowan, "Playing Games with Law" in Maksymilian Del Mar & Zenon Bankowski & Paul Maharg, eds, *The Arts and the Legal Academy: Beyond Text in Legal Education* (New York: Routledge, 2013) 69.



¹²⁰ Matsuda, *supra* note 81 at 9.

¹²¹ See Benedictus de Spinoza, *Ethics*, Part III [1677], translated by WH White & AH Stirling (London: Wordsworth Editions, 2001) at 141-146; see generally Gilles Deleuze & Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* [1980], translated by Brian Massumi (London: University of Minnesota Press, 1987).

¹²² See Brian Massumi, *Parables for the Virtual: Movement, Affect, Sensation*, (Durham: Duke University Press Books, 2002) at 28; see also Young, *Judging the Image*, *supra* note 93 at 32.

¹²³ See Brian Massumi, *A User's Guide to Capitalism and Schizophrenia: Deviations from Deleuze and Guattari* (Boston: MIT Press, 1992) at 93.

¹²⁴ See Alison Young, *Street Art, Public City. Law, Crime and the Urban Imagination*. New York: Routledge, 2014) at 32.

¹²⁵ Donald Nathanson describes three categories of affect: positive, negative and neutral. Within these three, he offers nine biological expressions: positive is expressed through joy and interest/excitement; neutral is expressed through surprise/startle; negative has the largest range of expression – anger/rage, disgust, dissmell, distress/anguish, fear/terror, and shame/humiliation: see Donald L. Nathanson, *Shame and Pride: Affect, Sex, and the Birth of the Self*, (New York: Norton, 1992).

¹²⁶ In common law, a community tends to be constituted by virtue of reading a shared text: see James Boyd White, *From Expectation to Experience* (Ann Arbor: University of Michigan Press, 1999); see also Kamir, *supra* note 105 at xvii.

¹²⁷ Michel Foucault, "Two lectures" in Colin Gordon, ed, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, trans Colin Gordon et al (New York: Pantheon, 1980) at 85.

¹²⁸ Patricia Ewick & Susan Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative," (1995) 29 *Law and Society Review* 197 (Heinonline) at 198.

¹²⁹ Jaime L. Beck, George Belliveau, Graham W. Lea et al, "Delineating a spectrum of research-based theatre" (2011) 17:8 *Qualitative Inquiry* at 688; see also Sharon Pollock, "Playwright: Parasite or Symbiont," Grace & J. Wasserman, eds, *Creating autobiography on stage* (Vancouver: Talonbooks, 2006).

¹³⁰ Beck, *ibid*.

¹³¹ Johnny Saldaña, *Ethnotheatre: Research from Page to the Stage* (Walnut Creek: Left Coast Press, 2011) at 33.

¹³² See especially also Martha-Marie Kleinhans & Roderick A. Macdonald, "What is a *Critical* Legal Pluralism?" (1997) 12:2 *Canadian Journal of Law and Society* 25 (in this article, critical legal pluralism imagines subjects as "law inventing" rather than only "law abiding"); see also Sally Engle Merry, "Legal Pluralism" (1988) 22:5 *Law Society Review* 869 (JStor); see generally Adelle Blackett, "Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct" (2001) 8:2 *Indiana Journal of Global Studies* 401; compare Kamir, *supra* note 105 at xii. Kamir argues that "law and film are two of contemporary society's dominant discourses through which society narrates and creates itself" (xii).

¹³³ I owe gratitude to the Ontario Institute for Studies in Education at the University in Toronto for hosting the performance art piece as part of their Decolonizing Conference; to Victoria Public Research Interest Group for a \$100 conference grant that assisted with buying supplies; to Martin Lukacs for support prior to and during the performance (including editing questions for the signage and the name of the performance itself); Hussan Syed for his presence and support during and after the performance; and to Tracey Jastinder Mann for taking photos when I realized I had brought a camera but left the battery at home in the charger.

¹³⁴ Drawing on W.E. DuBois and bell hooks, sociologist Norman Denzin, *supra* note 102, concludes that a performative social science can only confront and transcend the problems surrounding the color line in the 21st

century if it writes and performs culture in new ways; for discussion on critical utopias, see Tom Moylan, *Demand the Impossible: Science fiction and the utopian imagination* (New York: Methuen, 1986).

¹³⁵ Butler, *Gender Trouble*, *supra* note 75 at 7.

¹³⁶ See Sidonie Smith, "Identity's Body" in Kathleen Ashley, Leigh Gilmore, & Gerald Peters, eds, *Autobiography and Postmodernism* (Amherst: University of Massachusetts Press, 1994) at 270-1; see generally *Interfaces: Women, Autobiography, Image, Performance*, Sidonie Smith & Julia Watson, eds (Ann Arbor: University of Michigan Press, 2002).

¹³⁷ See generally Foucault, *supra* note 117 at 83.

¹³⁸ Hasebe-Ludt, Chambers & Leggo, *supra* note 147 at 20.

¹³⁹ Trinh T. Minh-ha. "Other than myself/my other self." In George Robertson, Melinda Mash, Lisa Lickner et al, eds, *Traveller's tales: Narratives of home and displacement* (New York, Routledge, 1994) at 20.

¹⁴⁰ See e.g. Justice Minister Jody Wilson-Raybould's speech: Jorge Barrera, "During suicide debate Justice Minister says it's time for First Nations to shed Indian Act 'shackles'" (13 April 2016) online: aptn National News <<http://aptn.ca/news/2016/04/13/during-first-nation-suicide-debate-justice-minister-says-its-time-for-first-nations-to-shed-indian-act-shackles/>>; see also Roxanne Lynn Doty, "Autoethnography – making human connections" (2010) 36:4 *Review of International Studies* at 1050.

¹⁴¹ Corrine Glesne, "That rare feeling: Re-presenting research through poetic transcription" (1997) 3:2 *Qualitative Inquiry* 202 (Sagepub) at 214.

¹⁴² See Frantz Fanon, *The Wretched of the Earth* (Harmondsworth: Penguin Books, 1963): To resist psychic, social, legal and institutional structures of domination – to begin processes that move us towards decolonization – we must first recognize the structures, not only intellectually but instinctively, beyond thinking to feeling.

¹⁴³ Chandra Talpade Mohanty, *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (Durham: Duke University Press, 2003) at 8.

¹⁴⁴ Foucault, "Two lectures," *supra* note 117 at 83.

¹⁴⁵ Mohanty, *supra* note 143 at 232.

¹⁴⁶ Pelias, *supra* note 84 at 418.

¹⁴⁷ See generally Erika Hasebe-Ludt, Cynthia M. Chambers & Carl Leggo, *Life Writing and Literary Métissage as an Ethos for Our Times* (New York: Peter Lang, 2009) at 18: While male autobiography receives attention in the academy, the further one moves away from that – female, racialized, etc. – the work tends to be received as other, deemed unimportant because it's too about one's inner life and can't be applied to all audiences (as if the white, male autobiography that cloaks itself as theory can be).¹⁴⁷ These beliefs and assumptions must be broken apart.

¹⁴⁸ (New York: Vintage Books Edition, 1989) at section 6.

¹⁴⁹ See Sherrill Grace, "Theatre and the AutoBiographical Pact: An Introduction" in Sherrill Grace & Jerry Wasserman, eds, *Theatre and AutoBiography: Writing and Performing Lives in Theory and Practice*. (Talonbooks: Vancouver, 2014) at 18; see Sidonie Smith, "Identity's Body," *supra* note 136 at 270-1.

¹⁵⁰ Homi Bhabha, "Epilogue: Global Pathways," Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014) at 268.

¹⁵¹ See Matsuda, *supra* note 81; see also Williams, *Alchemy of Race and Rights*, *supra* note 105.

¹⁵² Augusto Boal *Theatre of the Oppressed*, translated by Charles A. & Maria-Odilia Leal (New York: Theatre Communications Group, 1985); see also *Legislative Theater*, translated by Adrian Jackson (London: Routledge, 1998) at 16.

¹⁵³ *Ibid.*

¹⁵⁴ (Winnipeg: Arbeiter Ring Publishing, 2001) at 33. Simpson argues that storytelling is decolonizing because it is a process of remembering, visioning and creating a just reality.

¹⁵⁵ Angelika Bammer, *Partial Visions: Feminism and Utopia in the 1970s* (New York: Routledge, 1991) at 2.

¹⁵⁶ Patrick Johnson, "Unravelling Foucault's "Different Spaces"" (2006) 19:4 *History of the Human Sciences* at 88; see also Philippe Couton & José Julián López, "Movement as Utopia" (2009) 22:4 *History of the Human Sciences* at 98.

¹⁵⁷ Ruth Levitas, *The Concept of Utopia* (Syracuse: Syracuse University Press, 1990) at 148; see also Jill Dolan, *Utopia in Performance: Finding Hope at the Theater* (Ann Arbor: University of Michigan Press, 2005) at 7.

¹⁵⁸ Bammer, *supra* note 155 at 7.

¹⁵⁹ Couton and Lopez, *supra* note 156 at 98.

¹⁶⁰ Octavia E Butler, "Brave New Worlds: A Few Rules for Predicting the Future" (2000) 31 *Essence Communications* at 165-70.

¹⁶¹ Couton and Lopez, *supra* note 156 at 97-8; Russell Jacoby, *Picture Imperfect: Utopian Thought for an Anti-Utopian Age*. (New York: Columbia University Press, 2005); David Harvey, *Spaces of Hope*. Los Angeles: California University Press, 2000).

¹⁶² *Ibid*, Jacoby; *ibid*, Harvey.

¹⁶³ Bammer, *supra* note 155 at 4.

¹⁶⁴ Fredric Jameson, *Archaeologies of the Future: The Desire Called Utopia and Other Science Fictions* (London: Verso, 2005) at 3.

¹⁶⁵ Couton and Lopez, *supra* note 156 at 98.

¹⁶⁶ Johnson, *supra* note 156 at 88.

¹⁶⁷ Dolan, *supra* note 157 at 7.

¹⁶⁸ See Couton and Lopez, *supra* note 156.

¹⁶⁹ Bammer, *supra* note 155 at 4.

¹⁷⁰ Gregor McLennan, "The 'New American Cultural Sociology': an Appraisal" (2005) 22:6 *Theory, Culture and Society* at 11 cited in Couton and Lopez, *supra* note 156 at 98.

¹⁷¹ Boal, *Rainbow of Desires*, *supra* note 89 at 22.

¹⁷² *Ibid*.

¹⁷³ Achille Mbembe, "After Post-Colonialism: Transnationalism or Essentialism," *TATE*, online: <<http://www.tate.org.uk/context-comment/video/after-post-colonialism-transnationalism-or-essentialism-video-recordings>> cited in Erika Fischer-Lichte, "Introduction," Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014) at 13.

¹⁷⁴ *Ibid*.

¹⁷⁵ *Ibid*.

¹⁷⁶ *Ibid*.

¹⁷⁷ Lee Maracle, "Lee Maracle Speaking at May Day Assembly 2011," (video), online: YouTube <<https://www.youtube.com/watch?v=FNK3KDfMrRc>>; see also Harsha Walia, *Undoing Border Imperialism* (Vancouver: AK Press, 2013) at 136-7.

¹⁷⁸ Walia, *ibid* at 137.

¹⁷⁹ *Ibid*.

¹⁸⁰ See generally Anna Banks & Stephen Banks. *Fiction and Social Research: By Ice or Fire* (Walnut Creek: AltaMira Press, 1998) at 13; see also Joe Norris, *Playbuilding as Qualitative Research* (Walnut Creek: Left Coast Press, 2009) at 19; see also Prendergast & Saxton, *supra* note 183.

¹⁸¹ See generally Vilayanur S. Ramachandran, *The Tell-Tale Brain: A Neuroscientist's Quest for What Makes us Human* (New York: WW Norton, 2011) at 197; see also Prendergast & Saxton, *supra* note 80 at 281.

¹⁸² Tuhiwai Smith, *supra* note 59 at 39.

¹⁸³ Chambers-Letson, *supra* note at 94; see also Monica Prendergast & Juliana Saxton, "Seduction of the real: the significance of fiction in applied theatre" (2015) 20:3 *Research in Drama Education: The Journal of Applied Theatre Research* at 282.

¹⁸⁴ Norris, *supra* note 180 at 27; Rancière, *supra* note 106 at 13.

¹⁸⁵ Diana Taylor, *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham: Duke University Press, 2003); see also Bernard J Hibbitts, "Making Motions: The Embodiment of Law in Gesture" (1995) 6 *Journal of Contemporary Legal Issues*.

¹⁸⁶ Rancière, *supra* note 103 at 13.

¹⁸⁷ Richard Schechner, *Performance Theory* (New York: Routledge, 1988) at 190.

¹⁸⁸ See Conquergood, *supra* note 97 at 358-9.

¹⁸⁹ See Boal, *Legislative Theatre*, *supra* note 152.

¹⁹⁰ Johnson, *supra* note 156 at 6.

¹⁹¹ Cited in *ibid* at 6-7.

¹⁹² See generally Bernard Beckerman, *Theatrical Presentation: Performer, Audience and Act*, Gloria Brim Beckerman & William Vincent Coco, eds (London: Routledge, 1990) at 110-111 (Beckerman speaks to the differences between representational and presentational theatre).

¹⁹³ See Boal, *Theatre of the Oppressed*, *supra* note 189; see also David Diamond, *Theatre For Living: The Art and Science of Community-Based Dialogue* (Victoria: Trafford Publishing, 2007).

¹⁹⁴ Faedra Chatard Carpenter, *Coloring Whiteness: Acts of Critique in Black Performance* (Ann Arbor: University of Michigan Press, 2014) at 13.

¹⁹⁵ See Bertolt Brecht, *Brecht on Theatre*, translated by John Willett, ed (New York: Hill and Wang, 1964).

¹⁹⁶ *Ibid*; Prentki, Lecture, *supra* note 101.

¹⁹⁷ See Augusto Boal, *Games for Actors and Non-Actors*, Adrian Jackson, trans (London: Routledge, 2002); see also Jonothan Neelands & Tony Goode, *Structuring Drama Work: A Handbook of Available Forms in Theatre and Drama* (Cambridge: Cambridge University Press, 2000); see also *Applied theatre: International case studies and challenges for practice*, Monica Prendergast & Juliana Saxton, eds (Bristol: Intellect Books, 2009).

¹⁹⁸ Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings* (New York: Cambridge University Press, 2015) at 18.

¹⁹⁹ Erika Fischer-Lichte, "Introduction," Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014) at 14.

²⁰⁰ Gayatri Spivak, "Translation as Culture." *Parallax* 6:1 (2000) at 22.

²⁰¹ Saldaña, *supra* note 131 at 33.

²⁰² *Ibid*.

²⁰³ *Ibid*.

²⁰⁴ Those who participate in direct actions and protests show what happens when the state can't compel bodies to perform the roles it dictates, when it can't seduce its citizens to believe, follow or obey through its relied upon aesthetic, often subverting the state's aesthetics with signs and slogans: see generally Jan Cohen-Cruz, "General Introduction" in Jan Cohen-Cruz, ed, *Radical Street Performance: An International Anthology* (London: Routledge, 2013); Soyini D Madison, *Acts of Activism: Human Rights as Radical Performance* (Cambridge: Cambridge University Press,

2010); James Thompson, *Humanitarian Performance: From Disaster Tragedies To Spectacles Of War* (Chicago: Seagull Books, 2014).

²⁰⁵ In David Caudill & Steven Gold, eds, *Radical Philosophy of Law: Contemporary Challenges to Mainstream Legal Theory* (Atlantic Heights: Humanities Press, 1995) at 91.

²⁰⁶ Taylor, *supra* note 185 at 20.

²⁰⁷ See George Belliveau & Monica Prendergast, "Poetics and performance" in Audrey Trainor & Elizabeth Graue, eds, *Reviewing Qualitative Research In The Social Sciences* (New York: Routledge, 2013).

²⁰⁸ See Chambers-Letson, *supra* note 94 at xxv.

²⁰⁹ Lisa Ordell, participant in Tim Prentki Lecture, *supra* note 101.

²¹⁰ See Bhabha, *supra* note 150 at 273.

²¹¹ Dolan, *supra* note 157 at 5.

²¹² See generally Dolan, *supra* note 157 at 5.

²¹³ Glesne, *supra* note 141 at 214.

Witnessing

494 Sri Lankan

ethnic Tamils,

were all placed in immigration detention in Fraser, British Columbia, pending an inquiry into their identities, motives for travelling to Canada, security checks and a broader investigation of the MV *Sun Sea*.⁸

“[Utopia’s] function lies not in helping us to imagine a better future but rather in demonstrating our utter incapacity to imagine such a future

- our imprisonment in a non-utopian present without historicity or futurity -

so as to

reveal the ideological closure of the system in which we are somehow trapped and confined.”

- Fredric Jameson,
“The Politics of Utopia” emphasis added⁹

Witnessing

⁸ *Thanabalasingam v Canada (Citizenship and Immigration)*, 2015 FC 397 at para 4, Fothergill J.

⁹ (2004) 25 *New Left Review* at 46.

HOPKINSON:

Yes. If we supply food to you, it will establish a bad precedent here. In future other ship passengers in similar cases would consider it their right to demand food supplies.

GURDIT SINGH:

The immigration Department imprisoned us like criminals. It is always the responsibility of the jailor to feed his prisoners. That is all. We don't want to listen anything else.

10

“Physical movement, in the form of travel, was an integral part of utopian thinking from the earliest works of the tradition... the boat or ship, in the age of exploration, besides being a vessel that facilitated the movement across, and exploration of, an ever-expanding physical world, was also a discursive vehicle with which to move through, and survey, the uncharted horizons of the imagination[.]”

- Philippe Couton, & José Julián López. “Movement as Utopia”¹¹

Witnessing

¹⁰ Ajmer Rode, *Komagata Maru*, translated by Ajmer Rode & Surjeet Kalsey (SFU Library: Vancouver, 1985) at 77.

¹¹ (2009) 22:4 History of the Human Sciences at 101.

Migration causes ambiguity and challenges the performance of borders, confusing who belongs and who doesn't, destabilizing ideas of inside and outside.

Political scientist Roxanne Doty says state-making practices are primarily driven by “a desire for order, a desire to overcome ambiguity and uncertainty[.]”¹³

States draw on laws and conventions, such as the *United Nations Refugee Convention* and the *Immigration and Refugee Protection Act*, to resolve ambiguities while more vigorously performing the practices that build

its borders in order to prevent ambiguity, to remind people of its existence, of its agents who have the authority to enact violence and act with the threat of violence.¹⁴

“...immobility, symbolized by the island, or the tightly choreographed city, represents an attempt to restrain and modulate the constitutive notion of movement that powered utopian imaginations.”

— Philippe Couton & José Julián López, “Movement as Utopia.”¹²

¹² (2009) 22:4 *History of the Human Sciences* at 113.

¹³ Roxanne L. Doty, *Anti-immigrantism in Western Democracies: Statecraft, Desire and the Politics of Exclusion* (London: Routledge, 2003) at 74-5.

¹⁴ *Convention Relating to the Status of Refugees* (28 July 1951) 189 UNTS 137, [1954] ATS 5; *Immigration and Refugee Protection Act*, SC 2001, c 27.

“Our radical imaginations are under siege”

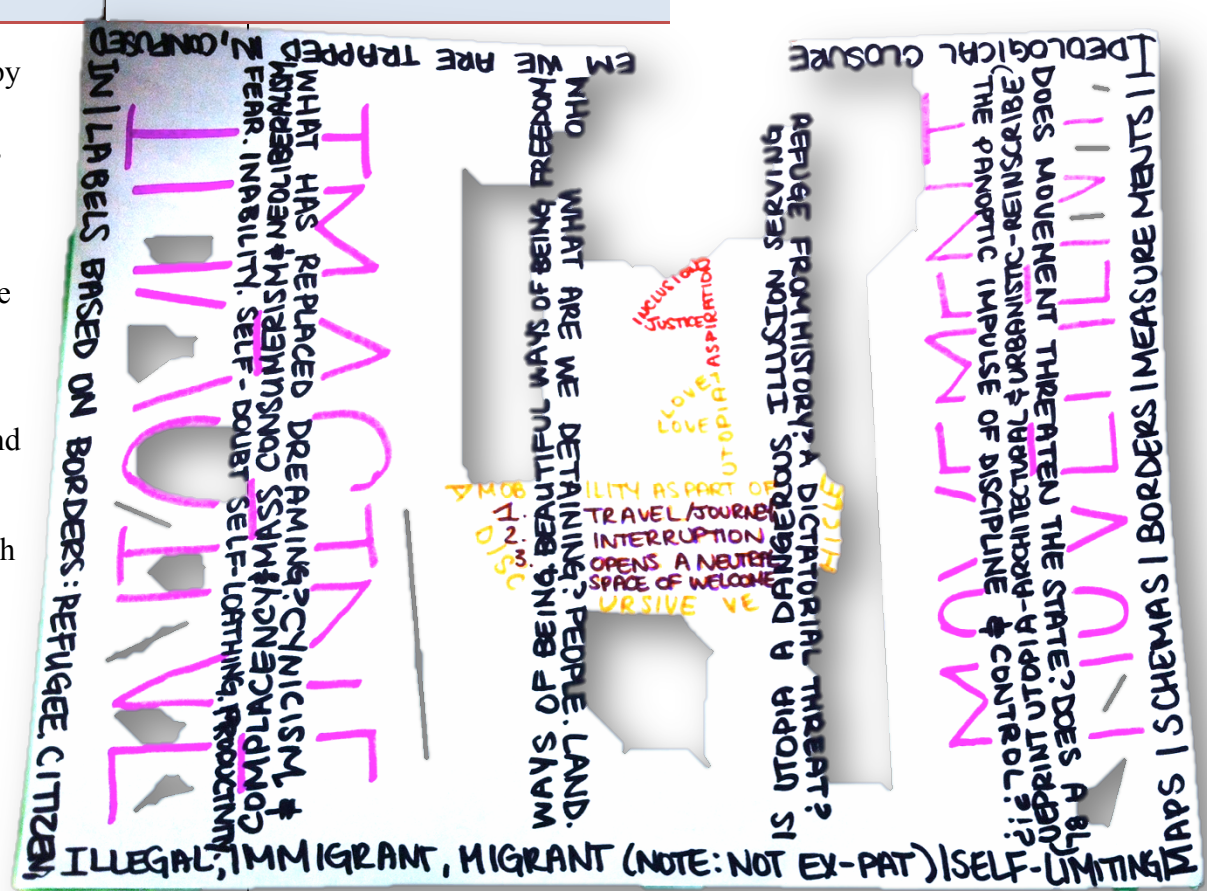
Ruha Benjamin, Comments re: *Octavia's Brood: Science Fiction Stories from Social Justice Movements*¹⁵

Octavia's Brood, a recently published anthology of speculative fiction stories written by social justice activists and organizers, presents science fiction envisioning a world without war, prisons, capitalism, and more. Ruha Benjamin describes it as, “One part sacred text, one part social movement manual, one part diary of our future selves.”¹⁶ Scholars and practitioners in the legal field who wish for change must also write the stories we want to read. If I want to re-imagine law and its stories, while considering race in context – in the current legal, political and social climate, I must write a story that invites others to witness and participate. The creative tension of space and place in systemic fixity with a desire for mobility and questions about unfettered mobility begins with the body – understanding its knowledge and harnessing its movement.

Witnessing

¹⁵ Walidah Imarisha & Adrienne mare brown, eds, (USA: AK Press, 2015), quotation online: <<https://www.akpress.org/octavia-s-brood.html>>.

¹⁶ *Ibid.*



**3. Theatre as Jurisprudence:
Investigating Race, Trauma and Whiteness
in the Canadian Legal Imagination
through *re: Munshi Singh* and Two Plays
on the *Komagata Maru***

Abstract: This chapter uses Ajmer Rode and Sharon Pollock's full length plays on the *Komagata Maru* to explore how narrative and aesthetics in theatre cast light on law's erasures in the case *re: Munshi Singh*. Through critical race, feminist and performance-informed lenses, I examine these three texts/performances to explore relationships between trauma and law, racial unconsciousness and whiteness, shame and power. This chapter also highlights elements of jurisprudential theatre within existing play texts to show how the four components are longstanding conventions amongst artists and playwrights. Using excerpts and juxtapositions, experience and the body, I jump between past and present in an episodic rather than linear fashion to journey with you: to understand how past laws live in present day bodies; to show how the body holds personal, systemic, legal and societal knowledge; and to dream of new ways to embody and re-embody law.

I invite you to sit down with your favourite mug (something warm or warming in it) and join me in this conversation (admittedly one where I'll be heard more than you, though I hope you'll speak and continue the conversation with others). You may find my writing voice unusual, unused to a deeply personal articulation of law, or you may find it validating, having felt similarly at times by virtue of shared critique, body, experience or values. Regardless, I'm grateful that you're sitting down with me and hope we can build a connection and begin dismantling the distance between reader and writer, law and performance, abstraction and presence whilst chatting about racism, shame, power, white supremacy and denial.

Trauma:

Representation Manual

Trauma: a crisis in representation; a gap in language; an aporia; a disruption of symbolic means; a state that cannot be pinned down.

trauma ruptures
narrative continuity

trauma defies
Witness

Trauma demands
Witness

trauma cannot be
represented

trauma must be
Represented

To be traumatised: to be possessed:
image, event, ongoing occurrence
image, event, ongoing occurrence
image, event, ongoing occurrence

trauma: temporal blurring,
no bridge between
past and present.

Trauma: incommensurable.

(a 'taken poem')*

To Represent Trauma:

1. Provide Witness
to a past, never fully
experienced when occurred.
2. Mimic its forms and symptoms.
Repeat
3. collapse temporality and chronology.
Repeat
4. characterize narratives by indirection.
Repeat
5. create empty spaces between: gutters.
Repeat.

To attempt Closure:

6. Connect fragmented moments.
 - 6a. Construct a reality, continuous, unified.
 - 6b. Fill gaps.
 - 6c. Translate separate images into a single idea.

* Similar to the poem on page 30, I've taken, rearranged and added to existing scholarly work to write
Trauma Representation Manual (a 'taken poem')

But artist,

You are not required to offer
narrative arcs or
redemption.

Trouble the parameters of trauma's end.

with presence	Play
with absence	Play
new forms	Push
new understandings.	Push

And readers (or spectators),
if you're waiting,
Resolution may
Catharsis may
Connection may
never happen.

trauma: unrepresentable?

Wounds cannot be closed off and contained.*

*Words taken and rearranged from Karen Crawley & Honni Van Rijswijk, "Justice in the Gutter: Representing Everyday Trauma in the Graphic Novels of Art Spiegelman" (2012) 16:1 Law Text Culture 93 (Heinonline) at 99-101: (numbers, structure, line breaks, title, punctuation and command language added).

[Pause]

T.S.: [...]

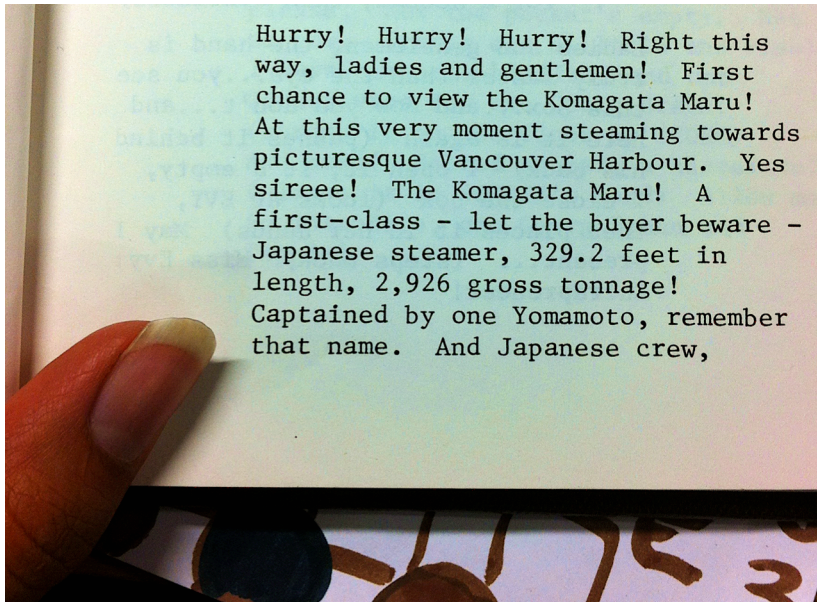


Figure 37: Page 1 of Sharon Pollock's Play, *The Komagata Maru Incident*. Photo by Preeti.

2

carrying a cargo of coal! And 346 Sikhs, count 'em! Plus 30 East Indians, religious affiliation unknown! Add em all together and what do you get? That is correct, sir! Give the man a cigar! Three hundred and seventy-six is the answer! Three hundred and seventy-six Asians, to be precise, and all of them bound for Oh Canada, We stand on guard for thee!

(He salutes, holds it for a moment, then lets it drop as he moves to the brothel area)

This is Vancouver, ladies and gentlemen, the 21st day of May, nineteen hundred and fourteen. Any [sic] may I direct your attention to my hat ...I place the hat on the table...I pass my hands over the hat...and what do we have inside the hat? A pair of gloves! I give you Inspector William Hopkinson, Head of Intelligence, Department of Immigration!

(He slaps the gloves into HOPKINSON's hand, looks at him for a second, then continues)

Ladies and gentlemen, the hand is truly faster than the eye...you see this box...and now you don't...and here it is again (passes it behind his back) I open it, it's empty, I close the box (looks EVY, then places it in her hands) May I present... (steps back) Miss Evy: Entrepreneur!

- Sharon Pollock, *The Komagata Maru Incident* at 1-2

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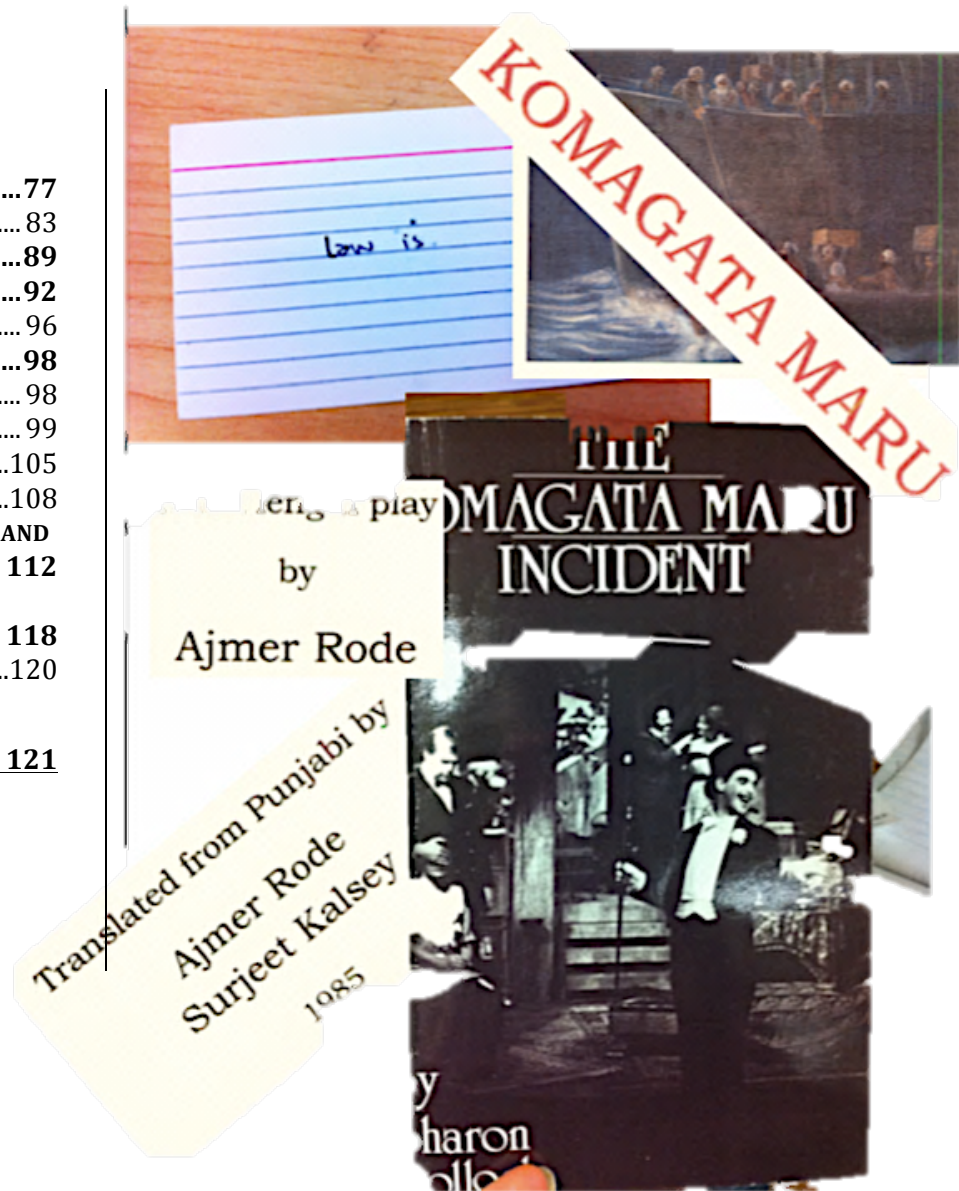


Figure 38: Collage of *Komagata Maru* covers. Photo and collage by Preeti.

Introducing a ‘dark chapter’ in Canadian history

Prime Minister Justin Trudeau:

Mr. Speaker, today I rise in this House to offer an apology on behalf of the government of Canada, for our role in the ***Komagata Maru Incident***.

More than a century ago, a great **injustice** took place.

On May 23, 1914, a steamship sailed into Burrard Inlet in Vancouver. On board were 376 passengers of Sikh, Muslim and Hindu origin. Those passengers, like millions of immigrants to Canada since, came seeking better lives for their families. Greater opportunities. A chance to contribute to their new home.

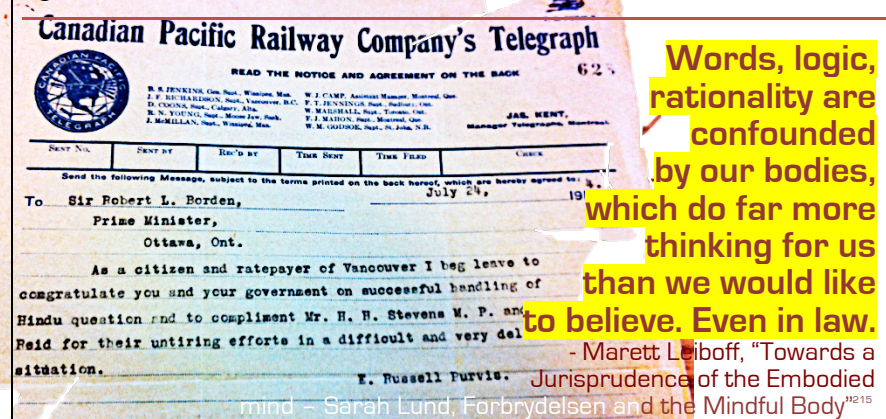
Those passengers chose Canada. And when they arrived here, they were **REJECTED...**

- *Komagata Maru Apology*, May 18, 2016
[**EMPHASIS** added]

I’m sitting at my writing desk, a hand-me-down over 20 years-old, six drawers for all my papers, wires, felt pens and notepads, and one long drawer for my keyboard. Coverage of Trudeau’s *Komagata Maru* apology plays on my laptop. A young South Asian man watches the apology on a screen at Simon Fraser University. White bodies walk by. The newscaster approaches him, asks why he stopped to watch. The young man says his father told him about the *Komagata Maru* once. He is watching for his father, to understand the relevance of that conversation.

After Prime Minister Trudeau’s *Komagata Maru* apology, I keep hearing white and brown newscasters say we cannot forget this “**dark** chapter” in Canadian history but who is it that forgot? Who is it that gets to forget? Even when something is forgotten, it doesn’t cease to exist, to reproduce itself, to wreak havoc without being seen, heard or known.

The “*Komagata Maru* incident” keeps being described as a **dark** chapter from the *past*, but the impact of the laws that caused the incident still live deeply in our bodies, not only my body and other brown bodies but also white bodies and the body politic.²¹⁴



Like the young man on the newscast, I did not learn about the *Komagata Maru* at school but from my father, from stories about a play he performed or discrete publications I found lying in his library, a library that was sometimes boxed, sometimes peering at me from a shelf, sometimes offering accessible information, other times written in Gurmukhi, Punjabi script too complex for my elementary reading abilities. Of these oral, written and performed Punjabi histories, I did not find any by a South Asian woman until the 21st century.²¹⁶

Figure 39 (above): Telegraph from E. Russell Purvis (24 July 1914), Vancouver City Archives. Photo by Preeti.

Prime Minister Justin Trudeau:

I also wish to APOLOGIZE to the descendants of the passengers of the *Komagata Maru*, including those who are here with us here today. We can never know what your lives would have been like had your relatives been welcomed to Canada. The ways in which your lives would have been different. The ways in which Canada would have been enriched. Those **possibilities are LOST TO HISTORY**. For that – and to you – **WE apologize**.

- *Komagata Maru Apology*, May 18, 2016
[EMPHASIS added]

While Trudeau is right that the possibilities of those passengers' lives being carried out on the portion of Turtle Island called Canada have been lost to history, our legal history should better remember those possibilities and our apologies should acknowledge the deeply embedded racism behind the policies that precluded those possibilities.²¹⁷ Renisa Mawani and other scholars have argued that the Canadian legal system often fails to acknowledge the connection between racialization, exclusion and present-day racism: Canadians prefer to believe that colonial racial history “no longer plagues the nation as it did historically.”²¹⁸ Indeed, Trudeau’s speech did not mention the word race, and legal historians have given little attention to *Munshi Singh, Re*, the 1914 test case which led to the deportation of all but 20 *Komagata Maru* passengers.²¹⁹ Without acknowledging race and white supremacist intentions underlying past wrongs, how will we learn to change, to understand the insidious and dangerous ways law still – consciously and unconsciously – employs such ideologies? And what is the purpose of apologizing?

Historians and playwrights began writing about race relations concerning South Asians and the Canadian government in the late 1970s and early 80s. Older histories, written between the 1920s and 1960s, by “well-respected Canadian historians” such as Donald Creighton, Arthur R.M. Lower, John Bartlet Brebner, Harold A. Innis, and William L. Morton do not include so much as a line or index entry on the *Komagata Maru*.²²⁰ Peter Ward’s first edition of *White Canada* published in 1978, considered one of the first comprehensive studies “of anti-Oriental attitudes and policies that prevailed in BC between 1850-1950,” devotes a chapter to “The *Komagata Maru* Incident” in “Part II: The East Indian Interlude.”²²¹ Where Ward began investigating “the full extent and periodic virulence of west coast racialism” focusing on Chinese, Japanese and South Asian populations to reveal the origins in the frustrated vision of a white British Columbia,²²² the works of historian Hugh Johnston and filmmaker Ali Kazimi have focused on South Asian history more specifically.²²³ The work of Johnston in particular offered groundwork for projects like Simon Fraser University’s comprehensive website “*Komagata Maru: Continuing the Journey*” which digitized archives from the City of Vancouver Archives, excerpts of Johnston’s book, historical reports, poetry, plays, photographs,

videos and audio related to the incident.²²⁴

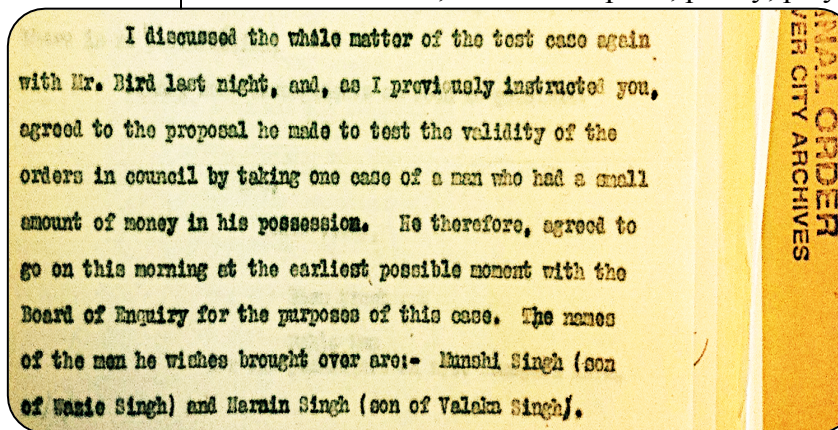


Figure 40: Letter from Sgd. R. L. Reid (25 June 1914), Vancouver City Archives. Photo by Preeti.



Figure 41: City of Vancouver Archives Admission Card. Photo by Preeti.

Part of a race historian's task, according to Constance Backhouse, is "[e]xploring the meanings attached to racial designations."²²⁵ If one's lived experience is that of a racialized person, she possesses knowledge and embodied history on race which can be shared through story. Theatre, as a form of meaning-making and alternate archival record-keeping, offers additional stories on race. Law – through text, power, force and expressive acts that occur in everyday life – manifests its racial understandings and designations in and on the body: "people perform for the law and, as such, become subject to the law."²²⁶ To examine how the law calls on racialized subjects to perform in ways that confirm their racial subjectivity and how stories can reshape or reimagine this doing, I juxtapose my own experiences with *Munshi Singh* and two plays about the *Komagata Maru*.

I am only allowed to use pencil inside, everything else must be left outside in a locker. I ask for a box of documents; the man says I can take a whole box but I will be watched closely because they "care what order the documents are in." I see a 'plan' for the Hindus and translations of "Hindoo" newspapers along with newspaper clippings. I see government documents concerning "deportation of undesirables." I read that two women were on the ship. The Archives' staff ask me to flip the pages more slowly. I write "Creative historical legal fiction: Yes," then draw an arrow pointing to a house and write, "I could build a home there." Another arrow points to the house followed by the words, "seeing how different stories are told and why." Another arrow points and asks, "that's just fiction, isn't it?" The pages are delicate. I lift them with two hands, flipping them slowly now, placing one atop the other, edges lined. I read "a man should be white in the heart." I read "outward whiteness counts for nothing." I write, "we fought for acceptance through assimilation." I read about Chinese head tax, find documents about Japanese internment and write, "Nothing happens in isolation." My neck burns and my hands shake as I write the notes. I'm suddenly cold. I ask for another box. They keep telling me that Simon Fraser University has digitized most of the documents as I ask for more. I come down with a full-on fever shortly after leaving the archives.

"Decolonization never takes place unnoticed for it influences individuals and modifies them fundamentally. It transforms spectators crushed with their inessentiality into privileged actors with the grandiose glare of history's floodlights upon them.

It brings a natural rhythm into existence introduced by new men and with it a new language and a new humanity.

Decolonization is the veritable creation of new men.

I. H. Stevens, Esq., M. P.

But this creation owes nothing of its legitimacy to any supernatural power; the 'thing' which has been colonized becomes man during the same process by which it frees itself."

My dear Sir:-

I have for the past year watched with great interest your untiring efforts to effect a proper regulation of the Oriental Immigration to British Columbia.

I have lived for eight years in Southern and I am one of your strongest backers in the determination that you are displaying to eliminate entirely the immigration of the Hindoo. He is an undesirable and one of the most dangerous weapons to have in our midst in connection with Empire matters and especially do I refer to the Indian Empire.

I sincerely hope you are successful in stopping immigration of the Hindoo into Canada.

Very truly yours,

H. H. Davis
Member, C. C. C.

PDMcT/A

- Frantz Fanon,

"Concerning Violence" in
The Wretched of the Earth
[emphasis added]²²⁷

Visiting the City of Vancouver Archives, where I held the documents instructing Canadian government officials on how to deal with the "Hindoo problem," allowed me to begin understanding some of "the ruptural effects of conflict and struggle" that a patriarchal colonial order imposes on migrants through its functionalist and systematising thought: eliminating multivocality, deporting alternate worldviews.²²⁸

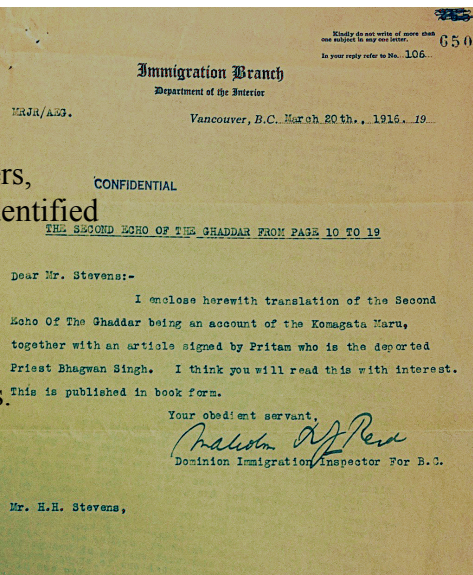
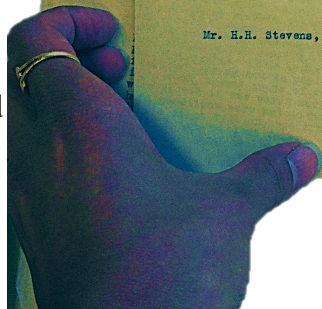
I held in my hands letters and telegrams from white citizens and white government officials, words typed before the *Komagata Maru's* arrival and after departure, explicit requests that no more "Hindoos" be allowed entry to Canada and then heartfelt congratulations on the government's successful deportation.

Linda Tuhiwai Smith's assertion that coming to know the past is part of decolonization began making practical, tangible sense as I came to understand my present-day bodily and cognitive knowledges hold alternate histories than those stored in the archive.²²⁹

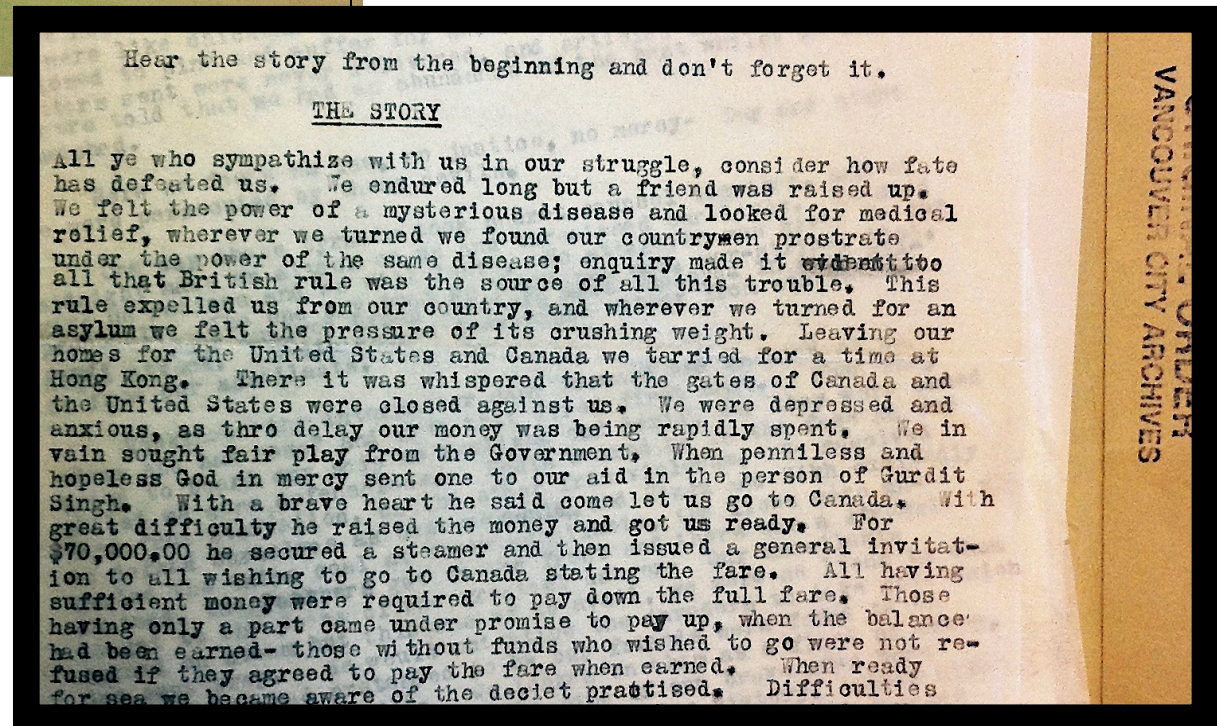
Figure 42: Letter from citizen of British Columbia concerned about "Oriental Immigration" (1913), City of Vancouver Archives. Photo by Preeti.

I held in my hands Punjabi articles and translations of Punjabi articles written by the passengers, their supporters, and radical organizers who identified as the Ghadr Party. They told a passenger story of the *Komagata Maru*, a story that isn't told in white people's letters and telegrams.

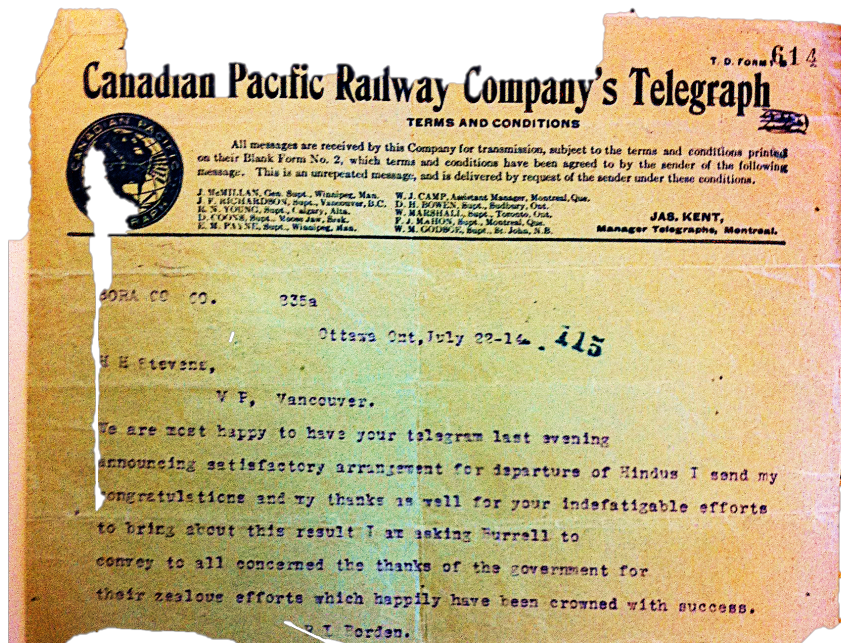
If I refer only to the legislation and case as law as legitimate sources of legal history, I would be participating in state law's suppression of knowledges, narratives and truths before society can encounter them. Such omissions reinforce the absence of multivocality and multiple worldviews. Decolonization involves holding alternate knowledges. These alternative knowledges form the basis of alternative ways of doing things, seeing things and understanding our relations.²³⁰



The Vancouver Archives allowed me to touch and be touched by these stories and to embody alternate facts, ones I felt connection to – ones I hadn't learned before, ones that helped me make sense of who I am and how I grew up. I also dismissed many sheets that didn't function that way. It's easy to gloss over paper, harder to gloss over bodies, stories told in the flesh. Paper allows access to some, empathy to those who already embody a connection. Theatre arguably does the same: you *can* turn off but it's harder – people are watching, they will notice what you do and how you feel, might even ask you about it. Even if you aren't on stage, someone is watching, holding you accountable. Even if your thoughts wander, your body and senses are present (unless you choose to leave the theatre). Theatre offers less control in what you can skim past, what you can choose to feel.



81 Figures 43 and 44: Letter from Immigration Inspector re: Ghadr Party (20 March 1916); English Translation of *Komagata Maru* passengers' letter in Ghadr Party Newspaper (1914), City of Vancouver Archives. Photos by Preeti.

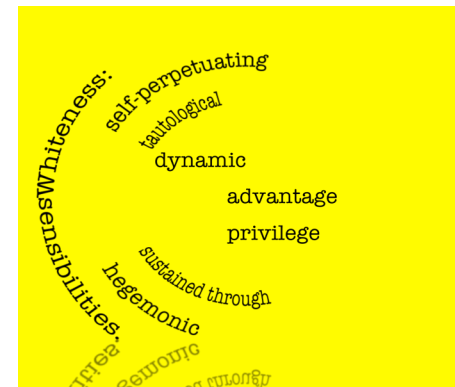


In this chapter, I compare and analyze *re: Munshi Singh* with two theatrical representations of the *Komagata Maru*: Sharon Pollock's *The Komagata Maru Incident* (first performed in 1976 in English) and Ajmer Rode's *Komagata Maru* (first performed on October 27, 1979 in Punjabi).²³¹ Examining the plays as jurisprudence – texts that teach us how to study, understand and interact with law - through critical race, feminist and performance perspectives, I investigate how they shed light on the presence of whiteness in the Canadian legal imagination. With text, aesthetics and bodies, these plays render visible the living process between legislation and embodied action. They offer theatre as a philosophy of law, revealing that plays can fill affective spaces that *Munshi Singh* neglects. By embodying law's erasures, their performance but also their texts voice silences that live in bodies, articulating the "racial unconsciousness" that lives in Canadian legal history and the Canadian legal imagination.²³²

Figure 45: Telegraph congratulating Immigration Inspector on “departure of Hindus” (22 July 1914), Vancouver City Archives. Photo by Preeti.

Where jurisprudential theatre develops a research-based, autobiographical playwriting methodology to create alternative jurisprudence, studying theatre as jurisprudence expands law through the study of performance, play texts and *the body itself*. Law's stories cannot be untold but can be retold and re-examined in order to reconstitute legal events.

Where Toni Morrison investigated whiteness in the literary imagination, I investigate it in the Canadian legal imagination by examining racial designations and aesthetics in law and theatre: how they are embodied, expressed, internalized.²³³



A series of “taken poems” from Faedra Carpenter Chartrand’s *Colouring Whiteness: Acts of Critique in Black Performance*.²³⁴ Taken rather than found because I took the words from her book and rearranged them. I didn’t ‘find’ them, just like Columbus didn’t ‘find’ India or Turtle Island.

By offering opportunities to understand embodiments of race, including whiteness, I hope readers can find ways to challenge, disrupt and frustrate those designations and begin seeing how elements of jurisprudential theatre exist in these plays and assist in that process. The *Komagata Maru* offers a specific space to begin deconstructing the presence, supremacy and aesthetic of whiteness so deeply embedded in common law legal systems, but also an opportunity to examine the invention, development and impact of whiteness in the construction of the Canadian legal imagination: borders, race, citizenship, exclusion, inclusion.

whiteness: a 2am freewrite

white people keep asking me to define whiteness.

A white man suggests I say imperialism, westernization or colonization instead of whiteness, says these are the words he uses to write about similar issues.

*whiteness:
self-perpetuating
tautological
dynamic
advantage
privilege
sustained through
hegemonic
sensibilities.*

This same man told me academic institutions will only change when 'the old guard dies.'

Another taken poem
from Carpenter's
book.²³⁵

A white woman cautions me about centering whiteness when it's already at the center of so much. Too much. I decide to make the font smaller when describing whiteness in this chapter – not to please her but because I hear her and still believe we as a society need to examine whiteness when examining race, race relations and racism.

Another white person cautions that my use of the word may turn some readers away. Fair. I don't want to turn people away but it's sometimes tiring making my work palatable. If you're still reading, you obviously aren't someone who chooses not to think about race simply because you don't want to or don't have to.

I have deeper conversations about race, human nature and politics with my cousin (five years my junior in Western linear time) than people with PhDs and tenure.

Lived experience matters. My cousin is a 6'5" brown-skinned man with a Grade 12 education, successful business, turban covering a head of long hair. He understands the subtleties of white and brown, of power and oppression: he knows what it means when a businessperson doesn't trust him once they meet him in person; when we go to a pizza joint with two other brown friends at 12am and the white server tells us she has no tables even though my cousin can see three empty ones; when a cop pull him over because he's wearing a hoodie while driving a red mustang. I never have to define whiteness for him or any of the brown people I grew up with because we could never pretend it didn't exist.

**Whiteness – Normative!
Historically paradigmatic!
Model characteristics to which all humanity should ascribe!**

Lead with sarcasm, attempt to decenter

Another taken poem from Carpenter's book.²³⁶

[deleted sections]



Figure 46: Spine of Peter Ward's book, *White Canada Forever*. Photo by Preeti.

a 2:16am freewrite:

So what do I mean when I say whiteness?

[Sometimes it's conflated with culture, sometimes it's conflated with religion. Sometimes it's reduced to colour. Sometimes it's investigated by bloodlines. The Canadian Constitution still uses the word "Indian" but carves out separate categories of discrimination for "race, national or ethnic origin, colour, religion."²³⁷]

[Pause]

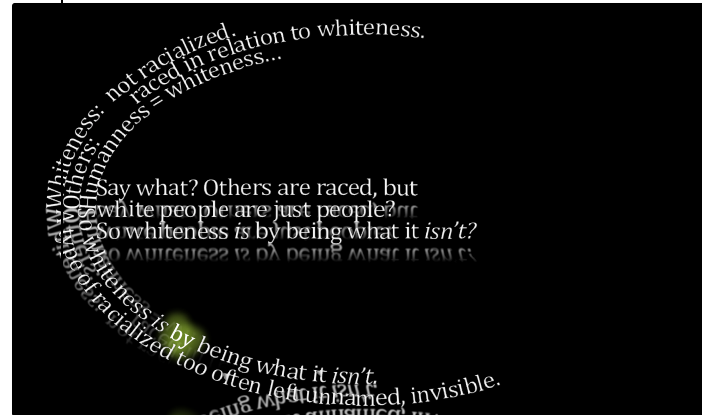
Because race is lived, constantly changing and nuanced in every context, I cannot give you a definition that works for all people in all places, at all times. Race is about power, about some groups having more power and other groups having less based on things we can see and ideas we've constructed. Within race, there are complexities, pigmentation differences that alter the experience of one individual said to be from the same race as another. Within race, there are intersections that impact and complicate one's experience: gender, class, mental and physical ability, orientation, and more.²³⁸ I cannot tell you everyone's experience or speak for all brown bodies, all South Asian bodies or even female Punjabi bodies. I can only tell you what I know based on the body I live in, the places I've lived, and the experiences I have had. It is up to you to interact with that and see what resonates, what confuses, what disgruntles and ask yourself why. I can tell you whiteness needs to be understood in order for it to stop holding so much power, in order to stop white supremacy's subtle, latent climates of hate and its blatant, outward methods of hate – all are violent and all are dangerous.

- *Unearned advantage, entitlement, ignorance, ease; not-having to think about race or skin colour; constructed social fact; self-perpetuating, something most white folks don't think about consciously well into their teens and twenties (if ever!); something many white people feel uncomfortable talking about despite feeling comfortable asking brown bodies about where they are from, what their culture or background is, where they are "really from" or appropriating the culture of others.*
- *Embodied entitlement, learned over time, through media and social interactions; shows up in insidious ways.*
- *Getting defensive in conversations about race before getting self-reflexive.*

[Pause]

- *A trauma in and of itself, of discovered ignorance at a late age, of guilt, sometimes of shame when realizing it cannot be escaped only understood over and over and over again, of sadness when the body looks inwards and discovers an emptiness, a gap, something filled with unquestioned, unearned, unfair power, entitlement, messages that weren't filtered.*
- *A privilege that can be understood and used in good ways.*

Can a person of colour embody whiteness?²³⁹



Another taken poem from Carpenter's book.²⁴⁰

I often refer to myself as a brown-female-socialized-white-male when operating in legal spaces (and after reading Patricia Williams' The Alchemy of Race and Rights).²⁴¹

2:27am:

- *a reason for making people of colour look more “fair” in advertisements and on television; a reason for skin whitening and nipple pinkening creams to line the shelves of too many **dark**-skinned nations...*
- *a type of racialized too often left unnamed, invisible.*
- *when a white colleague at a law firm learns I am Punjabi and says, “Oh, so are your parents alcoholics?” and none of the seven other white people seated at the table comment, at the time of utterance or after;*
- *left unchecked = white supremacy’s subtleties.*
- *a bar owner calling the special Gang Task Force when he notices my brown cousin’s birthday party bill has exceeded a thousand dollars; a white cop subsequently questioning my cousin, asking him how he is paying for the bill (not a cash or credit question); a brown cop subsequently approaching my cousin, admitting that the owner tips them off, but if he could answer where he makes the money, it would be helpful; my cousin’s father receiving a phone call a few hours later, after the cops have run the license plates of my cousin’s parked truck, the one he decided not to drive home.*

[Citations added to freewrite during edits.²⁴²]

[Pause]

**What we typically take to be
true,
just,
ethical or
good
emerges from that which is most
instantly recognisable to or
most immediately accessible
for us.**

Bruce A. Arrigo, “De/Reconstructing Critical Psychological Jurisprudence: Strategies of Resistance and Struggles for Justice”²⁴³

My analysis of the plays is performance and text-based but I have not seen either play performed live or in full. I rely on video recordings and documents, sometimes someone else's experience in lieu of my own.²⁴⁴ My access and interpretations are mediated by the play texts and a 2014 YouTube video that recorded a production involving excerpts from Pollock and Rode's plays as well as one other, all about the *Komagata Maru*. The three plays were blended into a single framing narrative, "Performing the *Komagata Maru*: Theatre and the Work of Memory," at the University of British Columbia.²⁴⁵ The recordings, passage of two years and someone else's scene selection but also a loss of materiality - of "the specific medial conditions of the performance" such as the bodily co-presence of the actors and spectators impact my performance-analysis (not only was I physically absent but the video recording does not capture the audience).²⁴⁶ My framework for empathy is mapped by my own feeling and the playwright's written text rather than in relation to actors' bodies, interpretations and performances, showing how the text of a play can offer legal and performative value even without bodies performing on stage.

As with a case, for the most part, I am left with text and a recording. I can reread and jump between sections of each play – something I could not have done had I attended a performance. I have my imagination, written dialogue and scene directions but I don't see characters embodied through a director and actor's imagination. I am distanced from the object of study – the embodied performance – which means I lose an aspect of affect and audience community.



Despite reading sections aloud (to myself or to others), my approach is text-heavy and cannot replace performance.²⁴⁷ For this reason, when theorizing about performance, law and play texts, I continually return to subject position through experience in order to implicate myself as spectator. I shift between a first-person narrative approach and third-person point of view from where I observe characters and playwrights. I draw on personal, scholarly and familial history to reveal how and why I chose the body, genealogy, performance and race as focal points. This autobiographical element complicates Canada's legal stories about the *Komagata Maru* and self-consciously delves into the playwrights stories, particularly into the intimacies of difference and race.

Text (e.g. mental health law) becomes an unconsciously lived (i.e. reified) narrative through the act of speaking or writing it (e.g. codes, procedures, policies, practices).

- Bruce A. Arrigo, "De/Reconstructing Critical Psychological Jurisprudence: Strategies of Resistance and Struggles for Justice"¹²⁴⁸

By weaving critical personal narrative into a self-conscious structure that reveals the images, text and themes that struck me during my research, I center the plays and case while using my story to lessen the abstractive gap between you, me and the *Komagata Maru*.

The Komagata Maru's casts and plots

You will meet a few different characters throughout this **dark** chapter in Canadian history. I'll provide introductions along the way but Rode's cast list is a good starting point: it includes the male historical figures of William Hopkinson, Mewa Singh and Gurdit Singh along with semi-fictional characters based on one of the two women (or perhaps the sole woman) aboard the ship and the passengers' lawyer (Edward Bird who is fictionalized rather than representative), amongst others.

[Pause]

I open Rode's play. All of the characters were played by Punjabi actors when it was first performed in 1976. This is not surprising given that it was originally written in Punjabi. Though there are three white characters: Hopkinson, Jean and the Lawyer.

[Pause]

Rode, an immigrant from Punjab and Canadian citizen, offers insight on how law lives in the body of the oppressed. His play focuses on the ship's passengers, with the action progressing chronologically (and violently) as they are denied basic food and water, attacked (unsuccessfully) by the police upon Hopkinson's orders and then deported to Punjab. Rode's lived consciousness of racial hierarchy allows him to draw beyond traditional archives into internal archives of experience and knowledge in the body.

WOMAN: A passenger in the Komagata Maru.
CHILD: Son of the WOMAN.
GURDIT SINGH: Charterer of Komagata Maru.
SECRETARY: Secretary of Komagata Maru.
HOPKINSON: Inspector in the Canadian Immigration Department; Fluent in English and Punjabi.
JEAN: Interpreter and receptionist in the Canadian Immigration Department.
MEWA SINGH: A popular personality among Punjabies in Vancouver.
EDITOR: Publisher and editor of a newspaper in English. Of Indian origin.
PRESIDENT: President of the society running Vancouver Sikh Temple.
LAWYER: Lawyer of Komagata Maru.
Bela Singh.
Dancers and CHORUS Singers.
Men in the court scene.

Figure 48: Screenshot of character list, Ajmer Rode's play, *The Komagata Maru*.
Photo by Preeti.

Komagata Maru was first produced in Punjabi by the Watno Dui Art Foundation, at David Thompson Secondary School, Vancouver, on 27 October 1979, with the following cast:

[In the introductory scene, not reproduced here, Sukhwant Dhindsa and Pushpinder Rode played the roles of the OLD MAN and the STUDENT respectively]

WOMAN : Amrit Mann

CHILD : Surti

GURDIT SINGH : Gurcharn Dua

SECRETARY : Inderjit Rode

JEAN : Surjeet Kalsey

HOPKINSON : Inderesh

MEWA SINGH : Bhupinder Dhaliwal

EDITOR : Charanjit Sidhu

PRESIDENT : Bhavkhandan

BELA SINGH : Bharpoor Mann

Others : Gurcharn Talewalia, Sahib Dhaliwal, Balwant Kainth

Directed and Designed by Ajmer Rode
Music by Narinder Bhagi and Sudarshan
Lighting by Paul Binning
Make up by Udey Kortana



Rode's play rejects law's artificial bifurcation between thought and feeling and offers an affective story that *Munshi Singh* misses. Shame and humiliation often drive male characters' fears, desires and action, while female characters serve as representations of anger and sympathy. The Woman on the

ship "symbolizes the emotional suffering of the passengers" and Jean "symbolizes the Minority [of] white Canadians who sympathized with the *Komagata Maru* passengers."²⁴⁹

Although the women (unfortunately) remain symbols rather than dynamic characters with specific experiences and histories, when understood through hermeneutics and aesthetics, his play reveals an embodied way of knowing, offering performed research from traditional archives and the body, as a critical site of power, politics and resistance.²⁵⁰

Bhupinder Dhaliwal, the actor who played Mewa Singh, is my father. 1979 is

some years before I was born. I clearly never saw my father perform this play (despite saying so in an initial draft), somehow conflating this memory with another; yet the mix-up offers me "the ability to tell something approaching a true story of the past, [without which] all memories too easily become fictions."²⁵¹ This mix-up somehow brings my written descriptions closer to my memories while simultaneously writing distance

between me and those memories.²⁵²

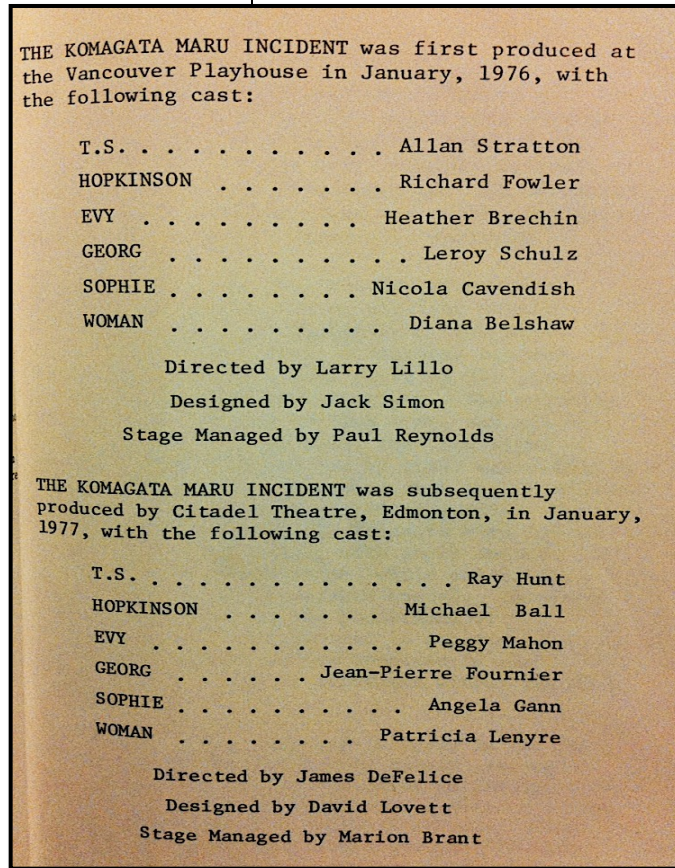
I open Pollock's play. It has one Punjabi character: the woman on the boat. The five others: white.

- TS: the Master of Ceremonies: white.
- Evy, female sex worker acquainted with Hopkinson: white.
- Sophie, female sex worker at Evy's brothel: white.
- Hopkinson, male government official: white.
- Georg, a German national: white.

Cast of the 1976 and 1977 productions: white.

Pollock's play, set in 1914, employs a carnival-like atmosphere where T.S., the Master of Ceremonies, orchestrates history by showing the Canadian government's process and success in denying *Komagata Maru* passengers entry to Canada. As you saw at the beginning of this chapter, T.S. opens the play by addressing the audience directly, sharing a story about the *Komagata Maru*. The play's action unfolds largely through the character of William Hopkinson, the government official responsible for correspondence with and decisions regarding the *Komagata Maru* passengers, who are represented by a woman who has no lines. The play takes place largely in a brothel where Hopkinson visits Evy, a sex worker who challenges his racism as well as his tactics. T.S., the Master of Ceremonies continues orchestrating the action throughout, pausing and interrupting scenes with the bang of his cane to offer public policy and opinions, amongst other commentary.

The play's action follows Hopkinson's communications with his network of informants in the local Sikh community, Evy and his secretary Jean. As the story unfolds, audiences witness Hopkinson being confronted about his 'race,' trying to exclude migrants on the basis of race and ultimately dying at the hands of a revolutionary Sikh as retribution for his actions.



Pollock intentionally focuses on discourse amongst “whites” because “as a white person, she did not think that the Punjabi story was hers to tell[.]”²⁵³ In having T.S. stage a show within the play, Pollock implicates her audiences; they are not only audience members of her play but spectators, bystanders and participants in a “racist side show.”²⁵⁴ Although Pollock centers whiteness, this focus does not reify whiteness but visibilizes and names white supremacy through aesthetics and dialogue in order to reveal its legal, historical and social impacts in Canada.

Figure 49: 1976 and 1979 Cast Lists, Pollock's *Komagata Maru Incident*. Photo by Preeti.

The cast and plot of *Re: Munshi Singh*

On June 25, 1914, a Board of Inquiry (the “Board”) ordered Munshi Singh deported from Canada.

Munshi Singh: Son of Wazir Singh; from Gulupore, India; “a native of India and British subject[;]” passenger on the *Komagata Maru*.²⁵⁵

J. Edward Bird & Robert Cassidy: lawyers acting on behalf of Mr. Singh

Bird and Cassidy appealed the Board’s decision to a Judge in Chambers but were unsuccessful. They appealed again to the British Columbia Court of Appeal (“the Court”) on June 29 and 30, 1914.²⁵⁶

The Court: Five white men

1. Chief Justice Alexander Macdonald
2. Justice Irving
3. Justice Archer Martin
4. Justice William Alfred Galliher
5. Justice Albert Edward McPhillips

The Court answered the following questions: Were Orders-in-Council (1914) 23, 24 and 897 valid? Was Canada’s Parliament authorized by the 1910 *Immigration Act*? Was *The Immigration Act* even constitutional? In other words, was it possible for Canadian laws to exclude British subjects of Indian origin?

No. 23: Prohibits “any immigrant (*i.e.* irrespective of **race** or nationality)” from coming to Canada unless “by **continuous journey** from the country of which he is a native or naturalized citizen, *and* upon a through ticket purchased in that country or prepaid in Canada.”²⁵⁷

No. 24: Prohibits any “immigrant of an Asiatic **race**” from “land[ing] in Canada unless” he “possesses in his **own** right money to the amount of **at least \$200.**”²⁵⁸

No. 297: Prohibits “**any** (*i.e.* irrespective of **race**) **artisan, or laborer, skilled or unskilled**” from landing at a port in British Columbia during a convenient time period: “**from and after March 31, 1914, until after September 30, 1914**” [emphasis added].²⁵⁹

On July 6, 1914 the Court concludes that Mr. Singh is “entitled to be deported”²⁶⁰ because he is from India and not a Canadian citizen; is “of the Asiatic **race** and does not possess \$200;” “is an unskilled labourer;” “belongs to a

prohibited class of people;” and “has not come by **continuous journey.**”²⁶¹ The Court further concludes that the King has the power to create the *Immigration Act* and that all three orders were *intra vires* - within Parliament’s power.²⁶²

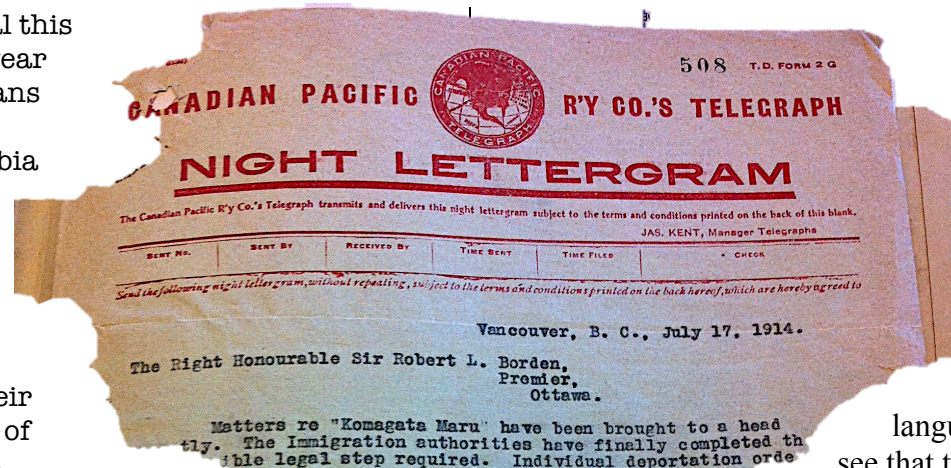
A Law That Is Ludicrous

Canadian government has recently enacted a law that prohibits passengers who do not board the ship from coming directly from India to Canada. So the law prohibiting coming to Canada will now be used against King Kong, China and other Indians who hope to get respect for ourse

But no matter how we are determined to keep the Indians from coming to Canada, we are determined to keep the law.

Figure 50: Ajmer Rode & Jarnail Singh, *Journey with the Endless Eye: Stories of the Komagata Maru Incident* at 22. Photo by Preeti.

Mr. Singh intended to appeal this result, aware that just one year earlier a group of South Asians persuaded Justice Gordon Hunter of the British Columbia Supreme Court to hear their case (even though the *Immigration Act* said Courts could not review the Board's decisions). Mr. Singh knew those men were successful in challenging their deportation and the legality of 1908 Orders-in-Council that similarly required immigrants to enter Canada from India via continuous passage.²⁶³ However, World War I broke out and Mr. Singh was unable to take his appeal to the Judicial Committee of the Privy Council.²⁶⁴



In her introductory note, Pollock explains that “the Canadian government believed it had devised an airtight method to virtually exclude immigration from Asia” by the early 1900s.²⁶⁵ Having reviewed the decision and the

language of the Orders, we can see that the government’s regulations, affirmed by the Canadian judiciary and enforced by the Canadian military, used language of exception and necessity to other and exclude *Komagata Maru* passengers.²⁶⁶ This “state of exception” used to exclude non-white British citizens is a

technology of white supremacy that, unlike the United States, Canadian history – recent and distant – fails to identify or proclaim an official end to.²⁶⁷

Matters re "Komagata Maru" have been brought to a head recently. The Immigration authorities have finally completed the last possible legal step required. Individual deportation orders have been personally served. Captain of the ship and Agent agreed to leave port upon completion of these legal details but tonight it appears that the Captain has been deceiving us throughout. He refuses now to weigh anchor although all necessary clearance and papers were placed in his hands by the Company's Agent here with full instructions to depart. I am convinced from the attitude of the Captain that he is in collusion with Gurdit Singh and is purposely deceiving the Government and the Immigration authorities. Mr. Reid Immigration Agent made a strong final appeal for assistance

Figure 51: Telegram regarding final deportation of *Komagata Maru* passengers (17 July 1914). Photo by Preeti.

LAWYER:

Mr. chairman, ladies and gentlemen.

Gentlemen, very proudly we tell the world that Canada is a vast country, endowed with great natural resources. Endlessly we preach that we follow the great British Government traditions. We believe in human equality, Canada's doors are open to all nationalities, races, colors. We welcome all.

Jurisdiction:

container for judgments, geographical or imagined

Yes, we do preach this to the outside world. But look at the Komagata Maru case. The passengers come from a familiar country, they are British subjects, have sacrificed for the British Empire in wars. Yet the Immigration Department has imprisoned them in their own ship - hungry, thirsty, humiliated.

Figure 52: Lawyer's speech in Ajmer Rode's *Komagata Maru* at 51-53. Screenshot by Preeti.

In stating that the "King" is permitted to make the laws in question, the Court, in fact, asserted Canadian sovereignty. Excluding British subjects from entering meant British subjects were not inherently Canadian: Canadian citizenship differed from British citizenship. The Canadian government, judiciary and military could thus perform sovereignty through exclusion based on jurisdiction and their own racist terms.²⁶⁸

Jurisdiction determines whether or not a tribunal or Court has the authority to decide a particular matter.²⁶⁹ It prevents Courts from encroaching on matters of government that Parliament is intended to handle or matters of expertise that specialized tribunals are meant to handle. It also offers finality in the litigation process, so that decisions cannot be endlessly appealed.

In *Munshi Singh*, the Court takes a bold step by reviewing the Board's decision, contrary to *The Immigration Act* of the time, but refuses to

answer the questions posed by Mr. Singh's lawyers based on jurisdiction.

Jurisdiction:

allows certain people to decide certain things;

Jurisdiction:

allows certain people to skirt deciding certain things.

Had Mr. Singh been detained as a result of a decision that was without jurisdiction – that is, without power granted to it by statute or law, or upon unconstitutional laws – the Court would have intervened.²⁷⁰ The Court decides, however, that the Board was "legally seized of the subject of inquiry."²⁷¹ In other words, the laws relied upon by the Board were deemed valid and legal so the Court could not interfere "upon questions which the Board was authorized to decide."²⁷²

If a ship full of Canadians goes to India, and Indian Immigration denies it entry to its ports, a storm would erupt in the British Parliament. Indians would be called mean, inhuman and tyrants. And now, now there is a hypocritical silence in the British parliament. They are ignoring the Komagata Maru incident as if there were animals, not human beings in the ship. Gentlemen, it is not an ordinary incident, It is a warning of an impending storm.

Figure 53: Lawyer's speech in Ajmer Rode's *Komagata Maru* at 52. Screenshot by Preeti.

Despite our desperate, eternal attempt to separate, contain, and mend, categories always leak.

Trinh T. Minh ha, *Woman Native Other: Writing Postcoloniality and Feminism*²⁷³

Courts cast spells: “awful magic,” race & white innocence

Using jurisdiction to limit the scope of the issue, the majority of the Court magically avoids answering hard questions about equality and the rule of law in a legal capacity. Jurisdiction does not narrow the questions the Court comments on but rather the questions that would have a legal impact. This strategy allows Justice McPhillips to opine on issues of race and equality on unenforceable tangents known as *obiter dicta*. Thomas Ross calls this sort of legal language that denies someone rights based on race by obscuring race “awful magic.” Georgio Agamben might call this awful magic “the state of exception,” a space where the normative aspect of law can “be obliterated and contradicted with impunity by a governmental violence that...nevertheless still claims to be applying the law.”²⁷⁴ Vincent Jungkuz might call the Court’s rationalization of racial inequality through rhetoric of jurisdiction “the racialized state of exception.”²⁷⁵ Whatever we call it, it is clear that rather than addressing the denial of citizenship based on race, the Court answers questions of jurisdiction.

Justice Martin:

Many questions were raised before us, some not legal but directed to the policy which led up to the statutes and orders-in-council under review, with respect to which **I repeat** an extract I gave in *Re the Coal Mines Regulation Act* (1904) 10 B.C.R. 408, at p. 419 (a case on the employment of Chinese in coal mines), [additional citation omitted] as follows: —

The policy of such an enactment as that **which excludes a particular race from the franchise is not a topic which their Lordships are entitled to consider** [emphasis added].²⁷⁶

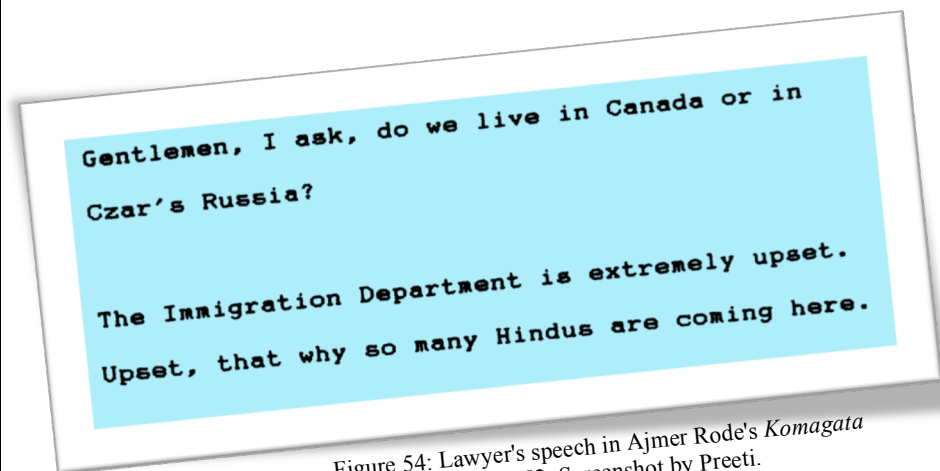


Figure 54: Lawyer's speech in Ajmer Rode's *Komagata Maru* at 52. Screenshot by Preeti.

By emphasizing a different history and logic than the case law, the lawyer’s speech (Figure 52, Figure 53, Figure 54) in Rode’s play shifts authority, offering an alternate space and language for justice.²⁷⁷ The speech offers readers and audiences the opportunity “to scrutinize the records of our past” and “identify the deeply implanted tenets of racist ideology and practice” in *Munshi Singh* without having a legal education or reading a case.²⁷⁸ Rather than acquiescing to the “the popular misapprehension that depicts our country as largely innocent of systemic racial exploitation,”²⁷⁹ this scene offers audiences and readers space to engage with the racism within the case and historical moment.

But how and why does the case – and state law – embody racism and other oppressive ideologies to begin with?²⁸⁰ Understanding the answer to this question requires realizing the “power” of a country’s law: force, decisions to deploy force, decisions to refuse deploying force. But law is not only about written rules and force, – it is also about narrative.²⁸¹ Those who wield the state’s power – judges, police, welfare bureaucrats, crown prosecutors, immigration officials, administrative decision-makers – possess the narratives within which people of colour, women and those in poverty, amongst other marginalized groups, are deemed different or less worthy.²⁸² A country’s law is then able to embody and perpetuate those narratives and their prejudices.

The power of narrative is at the center of understanding theatre as jurisprudence, to understanding why Pollock and Rode’s plays must be understood as part of the jurisprudential canon. Law is about power, which includes the ability to enforce decisions, but it’s also about narrative, how those decisions are framed, understood and told. Theatre captures embodied stories and can therefore communicate law’s embodiments but also challenge and frustrate law with embodied experiences, counter-stories and expositions of fiction and myths.

WOMAN:

Now they say go back. Go back. You Hindus no good, Your country slave, poor, dirty, no good. Don't dirty our land. Go back, ha...ha...ha... go back ha...ha ...ha...

[WOMAN'S shadow disappears. CHORUS shadows appear]

Figure 55: Woman in Ajmer Rode, *Komagata Maru* at 67. Screenshot by Preeti.

JEAN:

Are you serious. A Warship has been sent against the Komagata Maru?

HOPKINSON:

Yes. Its guns are already trained on the ship.

JEAN:

I can't believe it.

Figure 56: Dialogue between Jean & Hopkinson in Ajmer Rode's, *Komagata Maru* at 90. Screenshot by Preeti.

HOPKINSON:

Don't believe it then. But tonight the Komagata Maru will be blown into pieces. The Hindus will pay for what they did to us.

Scenes, such as the lawyer’s speech (Figures 52-54), Hopkinson’s scheming (Figure 56 above) and the woman’s commentary (Figure 55 below) relay deeper understandings of legal data through words and aesthetic by connecting “intuition, observation and experience.”²⁸³ While aesthetics offer space, voice, time and silence in *re: Munshi Singh* and the two plays, movement, images and dialogue in the plays’ performances emphasize different, underlying meanings than the case.²⁸⁴ By offering these sensibilities, aesthetics tell another story, one that occurs in the play text given stage directions and set descriptions but beyond the text when performed.

The Aesthetics of Race, Space & Jurisdiction

Neither playwright is fooled by law’s suggestion that stories fit in chronological containers or neat little boxes with borders. Pollock’s introductory note specifies that the *Komagata Maru* incident went well beyond the ship’s departure, including violent action against Hopkinson’s informers and Hopkinson himself, for which Mewa Singh was held responsible and executed. Rode’s introductory note speaks of the violent events that followed beyond Canadian borders, not only when the ship returned to India but also when news of the incident spread and revolutionary groups, such as the Ghadr movement, sprung up in multiple countries.²⁸⁵ Both playwrights structure their sets and produce relationships between characters mediated by law, politics, history, nation, and race.

Containment

Similar to the use of jurisdiction in *Munshi Singh*, Rode’s play works with the illusion of containment between spaces; unlike the case, it also offers an aesthetic of transparency. Rode’s stage holds three subsets:

Stage left shows the front of the *Komagata Maru*, an office in the ship, with a red light behind white linen symbolizing the body of the ship while also offering a place from which noise and disembodied passenger voices can emerge.

Centre stage shows the immigration office in Vancouver.

Stage right shows the front yard of the local Sikh temple.

Front of the stage is a common area, without walls or divisions, to be used freely by the actors with lights distinguishing background action (blue light) from the main action (spotlight).

By choosing not to drop the curtain at any point during the play – not even between acts – Rode’s play operates transparently, “shifting the spot light from one sub set to the other” so that all

Jurisdiction:

**Invisible boundary
constructed with words**

rooms – each of the three containers – are visible at all times. Text on a page, written judgment, even this essay with its juxtapositions and images, cannot offer the affect produced by the set’s aesthetic.

Rode’s intention behind placing the immigration office in the center is to create a wall between the *Komagata Maru* and the local Punjabi community.²⁸⁶ For me, this wall mimics law’s model of trauma: it is “marked by an aesthetic of containment.”²⁸⁷ According to Karen Crawley and Honni Van Rijswijk, law acknowledges “traumatic experiences that are distinct, linear and capable of separation into binary

categories.”²⁸⁸ Trauma fragments, separates and creates distance between past and present but also between event and aftermath, cause and effect, villain and victim, much like Rode’s set walls.²⁸⁹ The set’s aesthetic separation renders law’s boundaries visible yet the shared front of stage subtly offers audiences a promise of connection, of stepping past the divisions, walls and systems that state law used to separate the characters in the play.

(Prison & Theatre, Reality & Metaphor)

360
2392

I spend three months thinking of prison metaphors, the many institutional prisons that my body has become accustomed to, fluent in, its behaviours regulated.

MRJR/EC.

Vancouver, B. C., June 25th

14

Ottawa File No. 879545 Sir:-

W. D. SCOTT, ESQ.,

Superintendent of Immigration,
Ottawa, Ont.

With reference to the prevailing rumor that another ship is en route to Canada with Hindu passengers, I would suggest that if at all possible, should such a vessel arrive at William's Head, pratique be refused. I have no doubt that sufficient 'technical points' can be raised to enable the medical authorities to compel such a vessel to return.

In this connection I would beg to quote my wire of May 22nd., from William's Head Quarantine Station, with reference to the s.s. KOMOGATA MARU:-

"Komogata Maru with 376 Hindus including two women arrived at Quarantine last night. Dr. Nelson Quarantine officer has declined to issue pratique on grounds that ship has not bill of health from Moji Japan. He is taking this up with the Department at Ottawa. Will you take up situation in consultation with his Department in view of technical point raised. Imperative that Government patrol boat be delegated to keep this vessel under surveillance in view of attempt to land surreptitiously en route or in harbour at Vancouver where I intend if possible to keep her in stream and conduct necessary examination there. I am proceeding Vancouver; please advise there. Naval patrol boat has not yet reported for orders."

Recent developments have shown me that there may possibly have been a grave reason for the ship not receiving a bill

As I write this chapter, I've been working alongside men who form the only inmate run theatre company in Canada: William Head on Stage. In order to volunteer regularly, I underwent a four hour training session offered by Correctional Services of Canada, guiding volunteers on how to manage boundaries at a federal institution. The manual explains various types of boundaries: fences, walls, skin and words, but also physical space, emotional distance, and behavioural boundaries: "Personal boundaries are often hard to see but, just like fences and walls, they define a specific space."²⁹⁰ When you enter the prison, the body is boundaried, your emotions and stories should be boundaried – mimic the prison: securely fenced. Like the nation, Bordered. If the body becomes "a variable boundary, a surface whose permeability is politically regulated, a signifying practice within a cultural field..." then have I effectively entered a prison or am I just a regular member of society?

PLEASE RETURN
ORIGINAL ORDER
VANCOUVER CITY ARCHIVES

ADD MSS 69 vol. 1 pp. 349-5

Figure 57: Government correspondence re: Komagata Maru, Williamhead quarantine and immigration (25 June 1914), City of Vancouver City Archives. Photo by Preeti.

W.D.S. - 2.

.. .bill of health from Moji, Japan. Some ten of the Hindu passengers have developed severe cases of venereal disease, which on cross-examination, it has been shown, was contracted in Mojo. I am not positive whether this class of disease would be sufficient to refuse pratique to a ship, but I know under the Act - Section 3 b - the landing in Canada is prohibited of persons afflicted with any loathsome disease, etc.

Your obedient servant,

Pollock's play takes place in a brothel and picks up on the aesthetic of containment by placing a South Asian woman, representative of the ship's passengers, in a cage on stage without words for the duration of the play. The brothel offers a symbolic transparency, serving as a "symbol of moral ambiguity, reminiscent of the bankrupt nature of the state in its dealings with the *Komagata Maru*."²⁹¹ The cage displays the passengers' imprisonment, representing the trauma caused by law, precluding law's erasure of those passengers, of this history. Both the brothel and the cage show how law impacts and interacts with space and how that space, in turn, impacts bodies over time.²⁹²

The female characters in both plays complicate the narratives, taking space on stage where it is missing in the historical record (both the English and Punjabi records being dominated by men). Yet the Woman in Pollock's cage has no voice and the

Woman on Rode's ship has little agency, speaking only to her child and expressing the passengers' anger, sadness and hunger in isolation to the audience. Rather than becoming complex characters who develop and change throughout the course of a performance, these women serve as symbolic devices. Their presence demonstrates how law can impact a woman's body over time: as symbols, they are embodiments of law.

Nevertheless, despite offering direct visions of how bodies hold law and expressing clear sentiments towards law, these women's inner lives and stories remain largely unexplored compared to male characters. Grace and Helms argue that even the sex workers in Pollock's play, who challenge the government's actions and racism, have little agency beyond their role in the brothel. They add that the Sikh Woman on the ship in Rode's play "remains the Other, a sign merely of her own, and the child's, silencing and abjection, in a construction that comes dangerously close to reorientalizing her."²⁹³

Acknowledging the validity of Grace & Helms' critique, Murphy argues that the female figures nonetheless "stand in direct opposition to the racist Canadian imaginary" which "itself is an act of subversion" that "represents the beginning of an anti-racist politics."²⁹⁴ The power of this female aesthetic lies in the way their voices and silences interact with space and time on stage through presence, defying rather than duplicating their historical and legal erasures, offering a small opening where women insert their visions of justice or versions of injustice.

Figure 58: Letter in Figure 19 continued

In *Munshi Singh*, five judges wrote separate opinions despite coming to the same decision. One wrote his decision without any mention of race, while the others noted and dismissed race or suggested a naturalness to the subjugation of non-white races:

Macdonald: "...section 37 could not be and was not intended to have been made operative without discrimination in favor of some races whose legal status to be admitted to Canada was already fixed by statute or treaty."²⁹⁵

Macdonald CJA's comment exemplifies "**white innocence**", an imagined state of innocence "or absence of responsibility of the contemporary white person."²⁹⁶ The markers of judicial privilege, such as the initials CJA, indicate the status of judicial discourse within society and culture, rationalizing law's impositions while hiding its underlying racist worldview and intention: Indian subjects are less than white ones.

Acknowledging the lawyer's "ingenious argument" directed to section 37 of *The Immigration Act* – that the section discriminated against a particular race by singling it out and not applying the test to other races – Macdonald plainly says the section's purpose was, in fact, to allow for discrimination on the basis of race and that such discrimination is legal. He does not even have to spin "rhetorical magic around the issue of race" but can simply ignore "the conflicts and paradoxes, smoothing over choices for which we would later feel nothing but shame."²⁹⁷ Over 100 years later, Prime Minister Justin Trudeau apologizes, expressing shame and acknowledging the senseless discrimination of the *Komagata Maru* incident, without mentioning the basis of that senseless discrimination: **race**.

Race is mentioned in the *Munshi Singh* case 69 times, most frequently where McPhillips, JA addresses the argument that even if the impugned laws legally discriminated against the Asiatic race, Mr. Singh did not fall within their scope because he was Aryan, of the Caucasian race.²⁹⁸ While the Court did not find it "crucial" to address this argument because it found multiple alternate grounds on which to refuse Mr. Singh "permission to land," McPhillips still entertains the question of racial designation.²⁹⁹

Prime Minister Justin Trudeau:

I apologize, first and foremost, to the victims of the incident.

No **words can fully erase** the pain and suffering they experienced. Regrettably, the passage of time means that none are alive to hear our apology today.

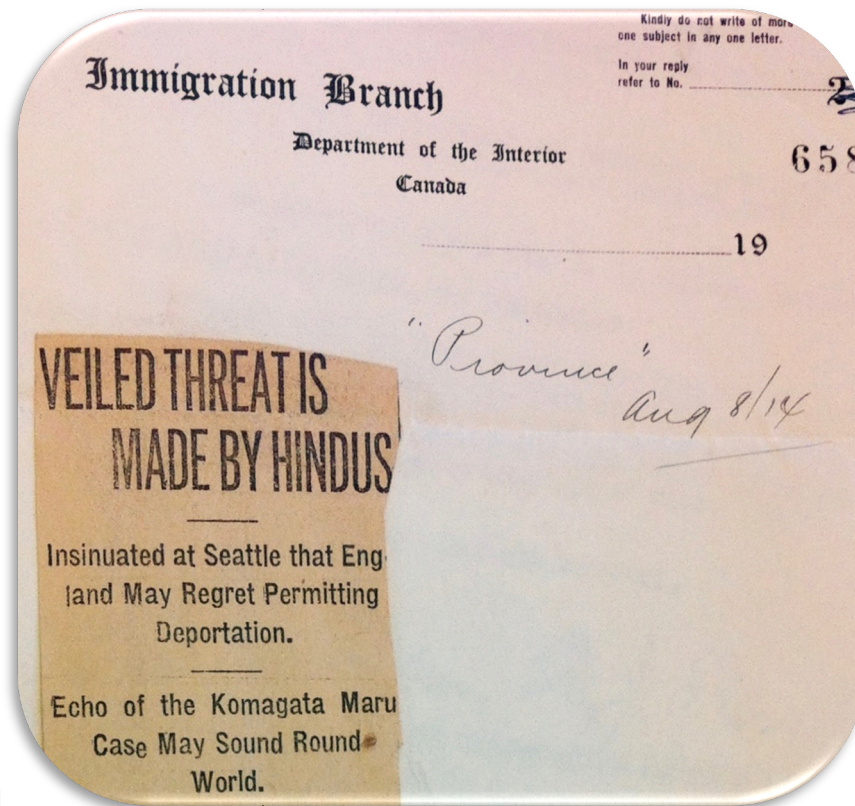
Still, we offer it, fully and sincerely.

For our indifference to your plight. For our failure to recognize all that you had to offer. For **the laws that discriminated against you, so senselessly**. And for not formally apologizing sooner. For all these things, **we are truly sorry**.

- *Komagata Maru* Apology, May 18, 2016
[emphasis added]

Munshi Singh serves as a site of regulation and containment. The case fixes and stabilizes meanings, bounding the range of appropriate interpretations and licensed readings, precluding questions that challenge the law's absurdity, that ask how law justifies attaching status to a body, status that subjects a body to its exclusions but not its protections. By obscuring race, white innocence treads through the rhetorical and historical tapestry of race, through the Canadian legal imagination and straight into Trudeau's apology, which failed to shift the framework for discussing race today.³⁰⁰

Rode and Pollock's plays, on the other hand, question, complicate and challenge race as it exists in the context of the *Komagata Maru*, the government's actions and the judiciary's decisions. The plays are "theatrical impression[s] of an historical event seen through the optique of the stage and the mind of the playwright" where "time and place are often compressed, and certain dramatic license is employed[.]"³⁰¹ Because the aesthetic and narrative structures in both plays record, represent and reproduce "aesthetic forms of cultural production, representation, and popular entertainment," they serve "as vessels for legal, political, historical, national, and racial knowledge."³⁰² They fill storied gaps, past and present, and serve as jurisprudence: informing us about the nature of law and legal systems, the relationship between law and justice, justice and morality, the social nature of law.



Looking for my argument?

Figure 59: Newspaper clipping titled "Veiled Threat is Made by Hindus" (1914), City of Vancouver Archives. Photo by Preeti.

"Jurisprudence is as big as law, and bigger."

Karl Llewellyn, *A Required Course in Jurisprudence*³⁰³

Let's try going beyond text and even subtext to embodiment. Let's begin unfolding how experience is law, how law constitutes experience and how theatre draws the two together in a form of jurisprudence.

At 21, on a plane to Montreal, a white man (at least 20 years my elder) asks me my name and background.

"Preeti. I'm East Indian."

Matthew tells me my name is a self-fulfilling prophecy and then asks where in India my family is from.

"Punjab."

He suggests it's worth thinking about the label "East Indian", especially since my family is from the Northwest of India (and later tells me he's an anthropologist who owns a heritage house in Victoria, the city where I'm presently writing). I soon realize East Indian is a British label imposed on me, an attempt to remedy colonial ignorance based on Columbus' geographical error.

I decide to continue identifying as Punjabi, brown or South Asian but not East Indian, knowing the words assigned to my ethnic and racial identity will continue evolving.

In the subtext and performance of these identity shifts, there is a narrative I was told while growing up, about Punjabi people being descendants of the Aryan race. Growing up with a Canadian education that emphasized the Holocaust, and having obsessively read all the books I could find about the Holocaust as a child, I found the association with Aryan troubling from a young age – tried to disassociate from it.

The *Encyclopedia Britannica*, as cited in *Munshi Singh*, writes of the "Aryans of India."³⁰⁴ Edward A. Frewen, also cited by the Court, distinguishes between "the Englishman and Hindoo" based on language and bloodlines.³⁰⁵ Frewen explains that "many Hindoos are men of non-Aryan race who have simply learned to speak tongues of Sanskrit origin."³⁰⁶ Frewen goes on to explore potential bloodlines between "Hindoos" and Aryans:

...there is no positive certainty that there was any community in blood among the original Aryan group itself, and that if we admit such community of blood in the original Aryan group it does not follow that there is any further special kindred between Hindoo and Hindoo or between Englishman and Englishman. The original group may not have been a family but an artificial union. And if it was a family those of its members who marched together east or west or north or south may have had no tie of kindred beyond the common cousinship of all ... **If then we are ever to use words like race or even nation to denote groups of mankind marked off by any kind of historical as distinguished from physical characteristics, we must be content to use these words as we use many other words without being able to prove that our use of them is accurate as mathematicians judge of accuracy** [emphasis added].³⁰⁷

Reading *Munshi Singh*, I see the association with Aryan was used strategically – an attempt to be accepted. My discomfort remains but I begin understanding why Punjabi people emphasized Aryan heritage, and sadly disassociated with what the law deemed worth less: Hindu, Indian, brown. Yet in citing Frewen, the Court acknowledges that race is not a biological or scientific fact but a constructed one with real social impacts and consequences.

Racial subjection is most successfully realized when the state is able to seduce and compel racialized bodies to perform as raced subjects...

- Joshua Takano Chambers-Letson -

A Race So Different

It's 12:09am. It's November 9, 2016. I'm editing. I'm not happy borders exist but they do. I'm not in the US but I'm

terrified. I don't want to be terrified but I am. I'm wondering how extreme, blatant, in-your-face white supremacy will creep past the border, in policy, political and legal relationships, cultural exchanges, jokes but also on the playground, in the office, under the skin, through conversation. I'm pinching myself, willing disbelief. This can't be true. I haven't believed it would be and still don't despite the numbers. There is still time.³⁰⁸

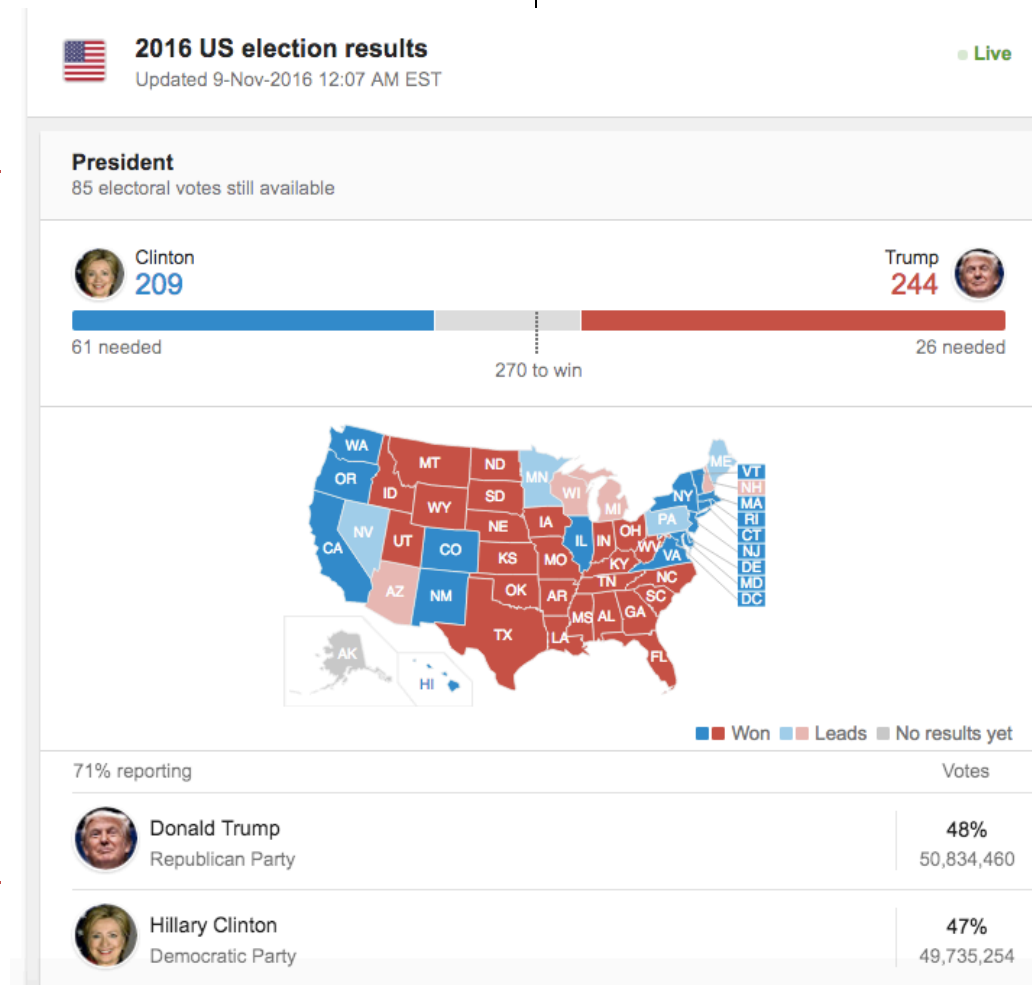


Figure 60: Screenshot of US Election Results (12:07am EST, 9 Nov 2016).

Race as geography: “Where are you really from?”

Law is not simply the narrative theme or historical background against which the performance of these plays occurs but a performance and process of racialization itself, questioned and unpacked by aesthetic practices of daily life and theatrical performances.

Justice McPhillips, citing *The Encyclopedia Britannica*:

... 2. The words ‘**Asiatic**’ and ‘**Oriental**’ are often used as if they denoted a definite and homogenous type – but Russians resemble Asiatics in many ways – **and the** Turks, Hindus, Chinese... It amounts to this that Asiatics stand on a higher level than the **natives of Africa or America**, but do not **possess** the **special material civilization** of Western Europe ... Asiatics have not the same sentiment of independence and freedom as Europeans... Individuals are thought of as members of a family, state or religion, rather than as entities with a destiny and rights of their own. This leads to autocracy in politics, fatalism in religion and conservatism in both [emphasis added].³⁰⁹

“Yes, European civilization and its agents of the highest caliber are responsible for colonial racism.”

Frantz Fanon, *Black Skin, White Masks*³¹⁰



Figure 61: Map of Komagata Maru’s route in Ajmer Rode & Jarnail Singh, *Journey with the Endless Eye: Stories of the Komagata Maru Incident* at 11. Photo by Preeti.

The anti-Asiatic sentiment and riots were strong in British Columbia, despite the absence of their mention in *Munshi Singh*.³¹¹ The province was built on “an unquestioned belief in the superiority of Europeans and the inferiority of non-Europeans,” the same ideas that still legitimize the appropriation of Indigenous lands and construction of separate spaces such as Indian reserves.³¹² In Rode’s play, Hopkinson says “everybody got worried” when Hindus began arriving to Canada in “shiploads,” afraid that the Hindus would “outnumber” whites such that “Canada [would] be full of them.”³¹³ His assistant, Jean, refers to European arrival to highlight the irony of his comment: “Like what happened to native Indians?” Hopkinson initially agrees but then pauses and says, “No, no I mean we whites are definitely a superior race. This can’t be applied to Hindus.”³¹⁴ In each instance where Hopkinson is faced with the illogic of his racial distinctions and hierarchies – the foundations for his thinking and decision-making, he fails to answer the question, instead making blanket statements about Europeans as a superior race. Similar to the Court’s *Encyclopedia Britannica* excerpt cited on the previous page, Hopkinson draws connections between whiteness and superiority but without false authority of an encyclopedia or perceived correlations between collective societies, fatalism and autocracy.

In Grade 2 having acquired new vocabulary from the Disney song ‘Colours of the Wind’ in choir class unaware of the difference between “Indian” and “East Indian” I told a group of white girls, “You just don’t want me in your club because I’m copper skinned!”

The European races must administrate...If you examine the world and its history, you will see that the laws of evolution that have shaped the energy, enterprise, and efficiency of the race northwards have left less richly endowed the peoples inhabiting the southern regions...³¹⁵

This named superiority enables one group to believe it should rule over another. Although the Court did not ignore race, it did not admit British Columbia’s racial climate informed its decision. It instead concluded that the “Asiatic race” included the “Hindu race,” conflating race with both religion and geography, such that borders contain races of people but people can also form race by virtue of their beliefs.³¹⁶

The Republicans won. People feel sick. We can’t sleep. People of colour tell me they wish they had taken a day off work, that they couldn’t function. Some cry, others have a mid-day drink. We talk about mobilizing. Hope. Solidarity. About the psychology of race.

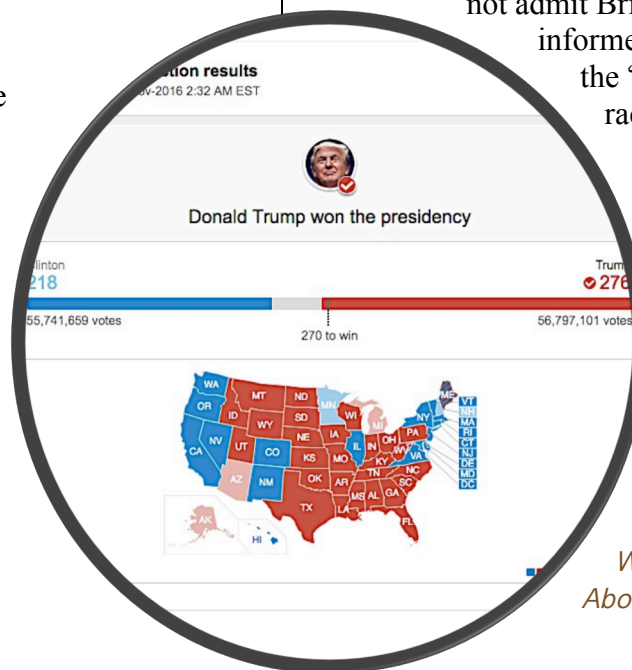


Figure 62: Screenshot of US Election Results (2:32am EST, 9 Nov 2016).

While geographical designation eventually moved to colour, most people of colour in Canada are still well-acquainted with the question, “Where are you from?” – a question that usually signals that the asker has ‘othered’ the asked.³¹⁷ These associations connect to current connotations of Muslim with terrorist, brown with immigrant, colour with not belonging. Exclusion persists. Hatred persists. White supremacy persists. Theatre is one place to understand how it lives in law and in bodies. Theatre is one way to find where and how it lives insidiously and discretely, before it becomes blatant and violent. Theatre is one site to begin naming, visibilizing and dismantling legally and socially embedded racial hatred.³¹⁸

Race has long been a justification of ruling classes to colonize others, initially based on class, then moving to facial features, colour and origins. Before **dark**-skinned bodies required colonial rule, the Irish were racialized and deemed as inferior, the Italians too. Under Hitler, Jewish people were designated as inferior: the state used phrenology to diminish people, publishing textbooks stating that head size/shape, nose size/shape, hair texture, eye colour, and other features rendered particular people less intelligent. The purpose of proving superiority (through propaganda and the research of phony scientists) was to justify and conduct genocide.

Aporias in the dominant narratives of **colonialism, oppression, and exchange belong to all of us,** caught nervously in the synapses of **our shared social Nervous System,** surging intimately if invisibly between and through our differences regardless of bloodlines like a public secret.

Acknowledged and unacknowledged, a social genealogy continues to reverberate in

the tangled spaces between

our race, gender, age and class identities –

available at any moment to be...“remembered” differently.

Rebecca Schneider, “See the Big Show: Spiderwoman Theater Doubling Back” [emphasis and spacing added]³¹⁹

Race as colour

Where I grew up, we described people as white, brown, Asian and Black. We didn't shy away from colour. (Except yellow. It didn't seem right so we said Asian instead.) Leaving the Lower Mainland for 'higher' education, I noticed that white people stopped being perceived as white or in racial terms, instead feeling uncomfortable when labeled. I found white people increasingly uncomfortable and far less versatile in conversations about race as most had not been raised in racially diverse settings.

If spaces that raise lawyers ignore whiteness rather than understanding and dismantling related systems of power, what does this mean for our legal system?

Pollock's characters reveal social scripts that are frequently – but not always consciously – associated with whiteness, including ways in which whiteness is aligned with absence, normativity, supremacy, privilege, beauty, purity, terror, and death.³²⁰ They sometimes associate race with nationality but more explicitly and emphatically with colour:

*T.S.: ...Ladies and gentlemen. Lest we forget. The Komagata Maru. A Japanese steamer chock-full of **brown** skin Hindus headed for a predominantly **pale** Vancouver, and entry into **whitish** Canada. The Komagata Maru in blue Canadian waters!³²¹*

Pollock's employment of colour – “brown skin Hindus,” “pale Vancouver” and “Whitish Canada” – visibilizes race with hues and words to create an uncomfortable space between the performer and the audience or reader and text, one filled with racial consciousness rather than racial unconsciousness.³²²

“White is a colour too.”

- Faedra Chatard Carpenter, *Coloring Whiteness: Acts of Critique in Black Performance*³²³

The word white is mentioned in *Munshi Singh* twice. Both times, it refers to a case being used as precedent, a case about a “white woman” – a “European immigrant” – working in the employ of a “Chinaman” or “Oriental” in Saskatchewan.³²⁴ The Court uses white and European interchangeably, but never writes “brown” in place of “Asiatic race” or “Hindu,” instead concealing colour- based discrimination with geography:

McPhillips: It is plain that upon study of the question, the Hindu **race**, as well as the Asiatic **race** in general, are in their conception of life and ideas of society fundamentally different to the Anglo-Saxon and Celtic **race**, and European **race** in general.³²⁵

The Court constructs race as it narrates it. By distinguishing brown bodies from Anglo-Saxon, Celtic and European bodies, the Court normalizes the latter while othering brown bodies, rendering them abnormal and labeling them “Hindu.” This othering separates those bodies so that they become associated with forces threatening the stability of the body politic, unable to join the social contract or fit under the rule of law.

Pollock's play, when performed and when read, offers a consciousness that the Court's decision lacked. Detaching from law while drawing on legal research, Pollock uses characters to expose and mock law's racial hierarchies, revealing that it “makes sense only from a particular viewpoint.”³²⁶ She shifts in and out of law through Hopkinson, Evy and T.S. as a form of critique, analysis and re-envisioning.

HOPKINSON: [...] my father didn't die in the service for the world to be overrun by a second-rate people."

EVY: You don't make sense. Who's second-rate when you run out of brown people?³²⁷

In the excerpt above, Pollock points out the absurdity and colour-based rationale of the government's racial logic by changing the order of the words and placing law in everyday conversation. Evy, a sex worker and proprietor of the brothel, is the sole white voice that speaks against William Hopkinson, the immigration officer deciding what would happen to people aboard the ship. Identifying "as a Canadian," Pollock feels "that much of our history has been misrepresented and even hidden from us."³²⁸ Her writing priority is therefore to offer "objective" representations of research in the form of historical or biographical figures, while only including those details that best lend themselves to the creation of "aesthetically driven theatre."³²⁹ Through her characters, Pollock offers the realities and details of legal and systemic oppression in order to enter mainstream debates about law and theory, borders and migration, belonging and exclusion.

Anne Murphy, a white South Asian Studies scholar at the University of British Columbia, argues that Evy's viewing of racial violence and inability to counter it calls on "whites to challenge racism," opening a space for "a white audience of today [to] inhabit in relation to the story of the *Komagata Maru*, an alternative that failed to prevail in its time but might be possible today."³³⁰ Evy invites all audience members to reimagine the past in the present, to reimagine the voices that inform law as well as the people and experiences considered in legal decisions.

By critiquing social arrangements, characters such as Evy and Jean facilitate self-reflexivity on the part of the audience. These female characters further suggest that women's voices will offer us an alternate Utopian future by questioning male authority and male-driven state violence. Through these characters, alternate possibilities and embodied, interpersonal details of the past, both playwrights complicate our understanding of white society in 1914 and offer audiences an opportunity to examine how **dark** corners of that past still exist. Without audience participation, however, the plays miss opportunities to cross divides of difference as jurisprudential theatre seeks to do.

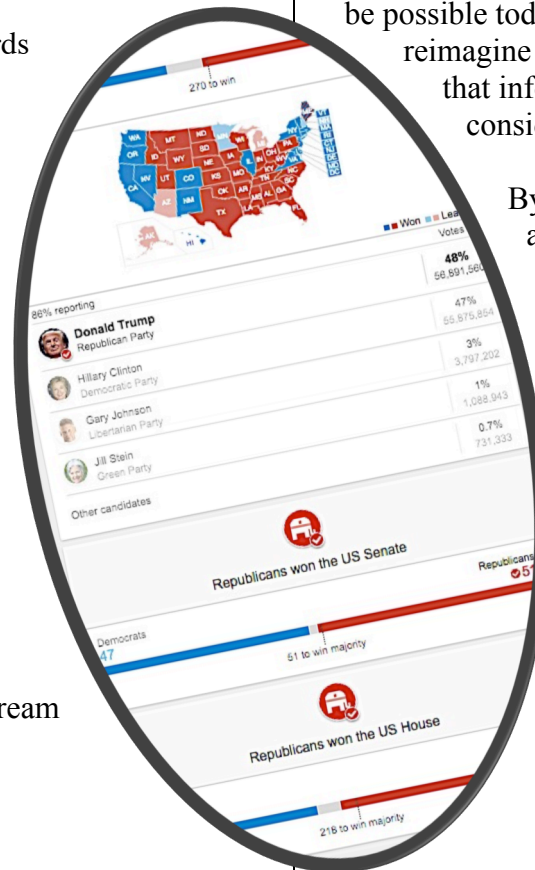


Figure 63: Screenshot of US Election Results.

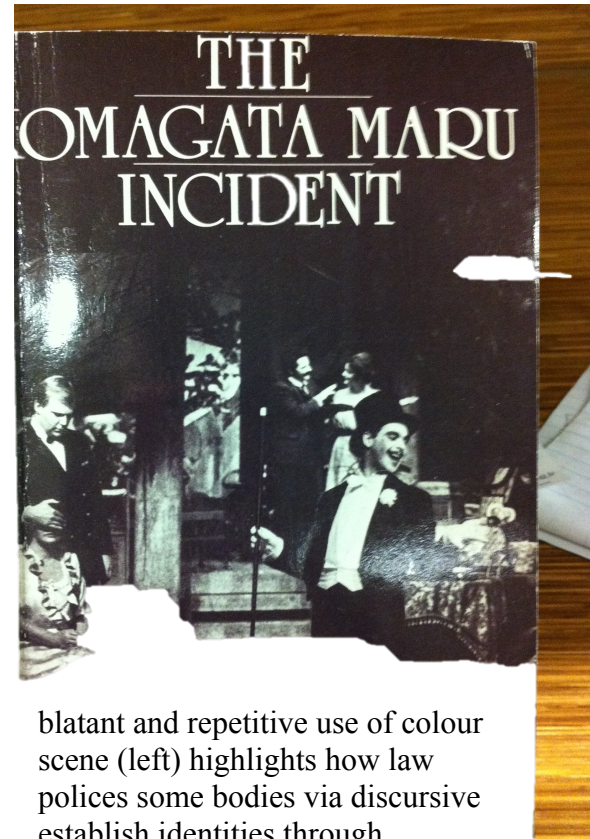
T.S.: Mr. Speaker; Prime Minister; Honourable Members!

Today I am opening my heart to you. I am telling you my fears – fears that affect each and every Canadian today [...] I am not ashamed, nor should you be, to state that this is a white man’s country! And I can tell you that our British legacy, our traditions, those things that we hold dear, that we have fought and died for, is placed in jeopardy today by a massive influx of coloured foreigners!

The class of East Indian that has invaded British Columbia is commonly known as Sikh – having been accustomed to the conditions of a tropical clime, he is totally unsuited to this country. He is criminally inclined, unsanitary by habit, and roguish by instinct. The less we speak of his religion, the better. Suffice it to say that unless his ridiculous forms of worship are relinquished, he is an affront to a Christian community. His intelligence is roughly that of our Aborigines. He indeed belongs to a heathen and debased class.

[...] Will the Sikh work for cheaper wages, and thus take away their jobs? Will he bring out his women, children, relatives and friends? Will Canadians step on a tram next week to ride from home to work, and never hear a word of English spoken? And once at work, if they still have a job, who will they eat their lunch with? Men, honest and true like ourselves, whose fathers made this country what it is today – or will they be surrounded by coloured men with foreign food? [...]

- Pollock, *The Komagata Maru Incident* at 26-7.



blatant and repetitive use of colour scene (left) highlights how law polices some bodies via discursive establish identities through normalizing others. Such scenes offer readers opportunities to re-inscribe how they see or approach histories and bodies outside of law’s constraints by revealing underlying, deep-seeded motivations behind historical laws and policies. Whiteness enacted does not simply invert racial representations or reify racial hierarchies, it has the potential to revise racial hierarchies by complicating how we perceive others and ourselves.³³²

Here, Pollock uses T.S. as the “white voice of the state,” a master of ceremonies who freezes and reactivates scenes by banging of his cane on the floor. Circus-like in many ways, T.S. sometimes turns state law and regulations into a magic show while other times elevating them to the extent of irony.³³¹ T.S.’s in this particular parcels out and systems that difference, while spectators and

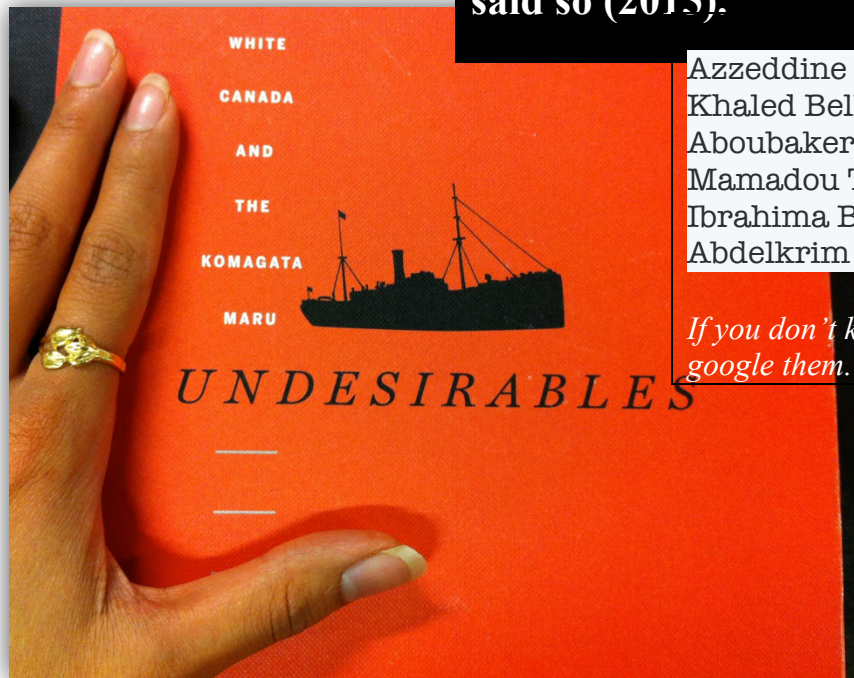
The Boogeyman is...white?

It's the morning after Trump won. I'm editing again. A pale-skinned woman next to me at the coffee shop sees one of the election pictures I paste in here and says, "No, no, please put it away," then apologizes for interrupting me, tears in her eyes.

Did you know organized white supremacists are Canada's largest domestic threat?

CSIS, the Canadian Security Intelligence, said so (2015).³³³

A half hour later, a group of white school-kids walk by the window. One puts his hand to his chest and moves his arm outward. My chest drops. I try to persuade myself it isn't what I think, that he didn't make eye contact with me and do a "Heil Hitler." A woman behind me says a young boy just looked at her and did a "d--- "



Azzeddine Soufiane,
Khaled Belkacemi,
Aboubaker Thabti,
Mamadou Tanou Barry,
Ibrahima Barry,
Abdelkrim Hassane.

If you don't know who these six men are, google them. It matters.

"A what?" I turn around to face pale cheeks (plump like golf balls beneath her eyes) and dyed red hair.

"A dab – it's a dance move" she laughs, her cheeks suddenly paler against the red. I'm comforted but also sad. This is the psychology of race:

extra, unwanted thoughts. We already carry so much. I don't want to carry more. I don't want others to carry more.

The next morning Obama talks about the sun coming up.

Figure 65: Cover of Ali Kazimi, *Undesirables: White Canada and the Komagata Maru*. Photo by Preeti.

Casting Hopkinson or casting shame? Internalized Racism and Law's Reach into the Body

The white male is represented in both plays by William Hopkinson: Immigration Department Inspector, former Calcutta cop, white in appearance, rumoured to have an Indian or “Hindu” mother. I interrogate Hopkinson’s race because it matters: racism permeated that time, so we have to know the racial designation of the characters, especially when both playwrights use Hopkinson to explore the impact of the Canadian government’s agenda for a white Canada.

JEAN: Mr. HOPKINSON, you can't support this. I can't believe it. They are human beings like us.

HOPKINSON: They are an inferior type of human being. They are Hindus.

JEAN: How about your own mother. She was a Hindu too. [...] Your mother was a Punjabi. How can you hide it from the world?

HOPKINSON: Again the same nonsense. Didn't I tell you I don't know anything about my mother.

JEAN: If I give you a firm proof, then?

HOPKINSON: Well... OK, OK, my mother was a Hindu. That is why I hate Hindus.

JEAN: Hate your mother's race?

- Ajmer Rode, *Komagata Maru*, Act 2, scene 5

Similar to Evy from Pollock’s play, Jean, Hopkinson’s white secretary, counters the state through interpersonal and personal interactions. By interrogating his race to challenge his bigotry, she “allows Punjabi viewers to imagine the possibility of inclusion, a society available *for them* now that was unrealized in the past.”³³⁴ In both plays, white female characters are positioned with little systemic power but are the sole white voices who use their personal power to counter the state.

Bodies actively engage in a process of embodying certain cultural and historical possibilities, a complicated process of appropriation.³³⁵ Hopkinson’s character offers a site where law and performance not only meet at the border but at the body, bringing racialized subjectivity into being.³³⁶ Hopkinson’s response to his Mother’s race offers a frame for historicizing the process of South Asian racialization with respect to the *Komagata Maru* while complicating and contesting how this same process continues to subject South Asians and other people to a racial, political and legal order that existed in 1914. In both plays, his ancestry serves as a point of shame and pride, as a site of white supremacy but also internalized racism.

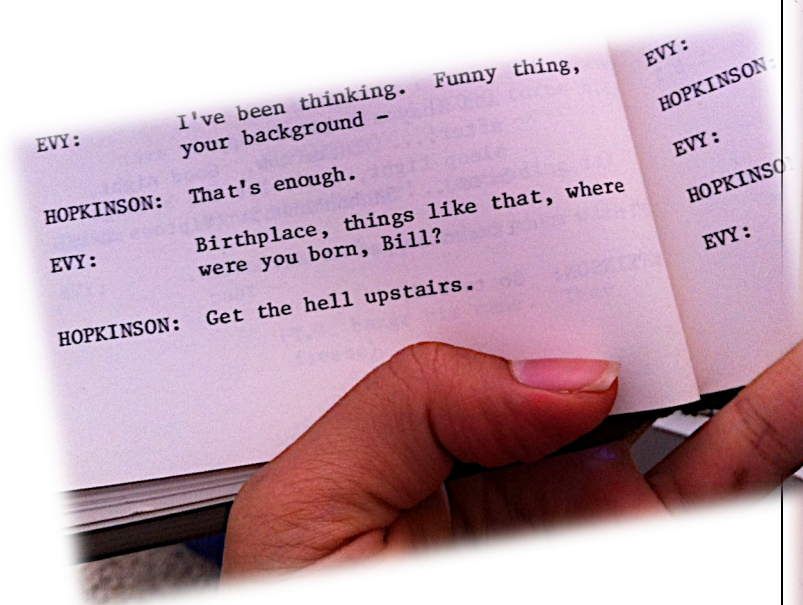


Figure 66: Me holding a stack of books about the *Komagata Maru*.
Photo by Preeti.

White?
Brown?
English?
Punjabi?

At age three, I say: "Mama, English only," before getting out of the car for a walk in Bear Creek Park.

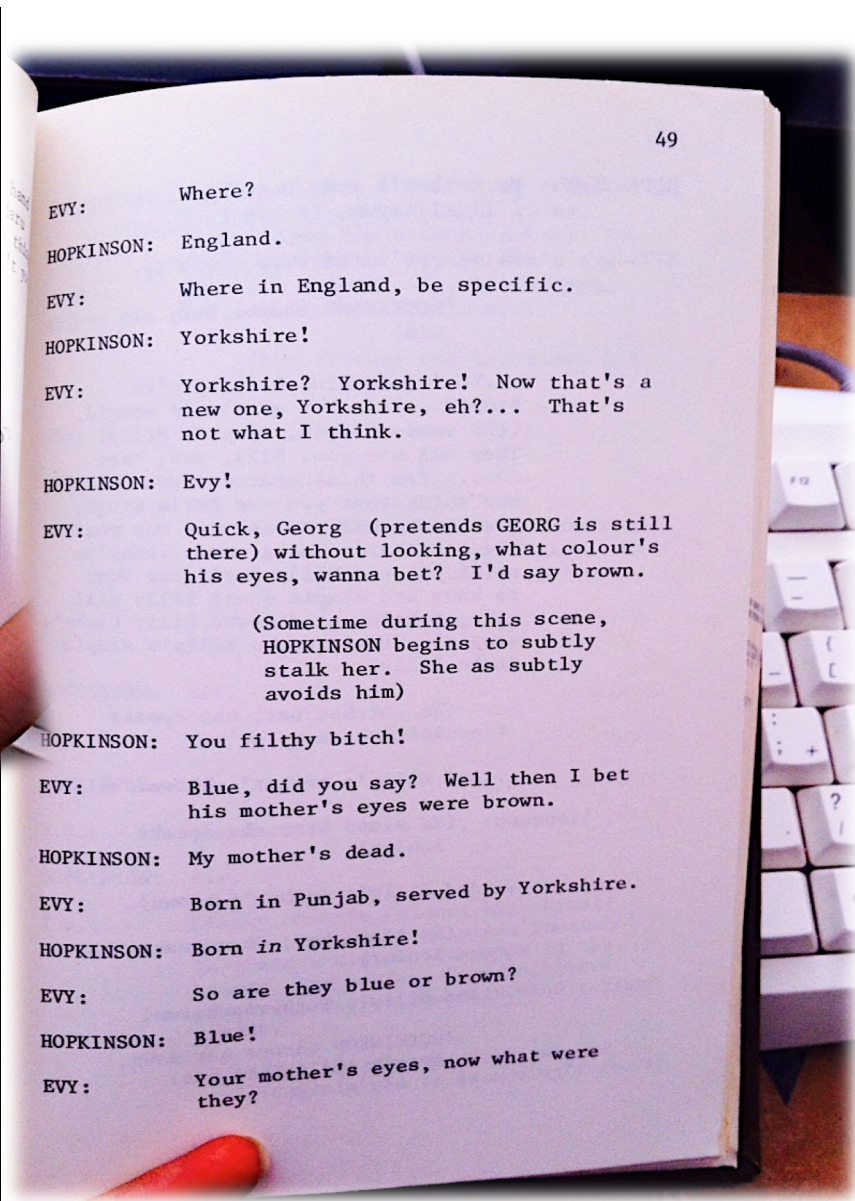
As though language could conceal our skin.



EVY: I've been thinking. Funny thing,
your background -
HOPKINSON: That's enough.
EVY: Birthplace, things like that, where
were you born, Bill?
HOPKINSON: Get the hell upstairs.

My Mother told me this story without flinching.

Was I like Hopkinson when I was three? Perhaps until I was 18 and moved to England where the exoticization of my "Indianness" by white schoolmates in university (where being ethnic suddenly became fashionable) made me realize my culture was something sought after.



49

EVY: Where?
HOPKINSON: England.
EVY: Where in England, be specific.
HOPKINSON: Yorkshire!
EVY: Yorkshire? Yorkshire! Now that's a new one, Yorkshire, eh?... That's not what I think.
HOPKINSON: Evy!
EVY: Quick, Georg (pretends GEORG is still there) without looking, what colour's his eyes, wanna bet? I'd say brown.

(Sometime during this scene, HOPKINSON begins to subtly stalk her. She as subtly avoids him)
HOPKINSON: You filthy bitch!
EVY: Blue, did you say? Well then I bet his mother's eyes were brown.
HOPKINSON: My mother's dead.
EVY: Born in Punjab, served by Yorkshire.
HOPKINSON: Born in Yorkshire!
EVY: So are they blue or brown?
HOPKINSON: Blue!
EVY: Your mother's eyes, now what were they?

Figure 67: Sharon Pollock's *Komagata Maru Incident* at 48-9. Photos by Preeti.

Edward Said says stories about our past tell us about cultural attitudes in the present.³³⁷ Hopkinson shows us ways that we embody, take in, absorb cultural attitudes about ourselves as racialized people, brown and white. His anger at the ship is simultaneously anger at himself, an attempt to decimate a part of himself he is trying to escape. Escape because of shame but also fear, fear of what will happen to him if it becomes known and fear of becoming less than. While I differ from Hopkinson in many ways, as a young child I was just as vulnerable to internalized racism, aware of the ideas that informed the world around me but unaware of how I absorbed and embodied them.

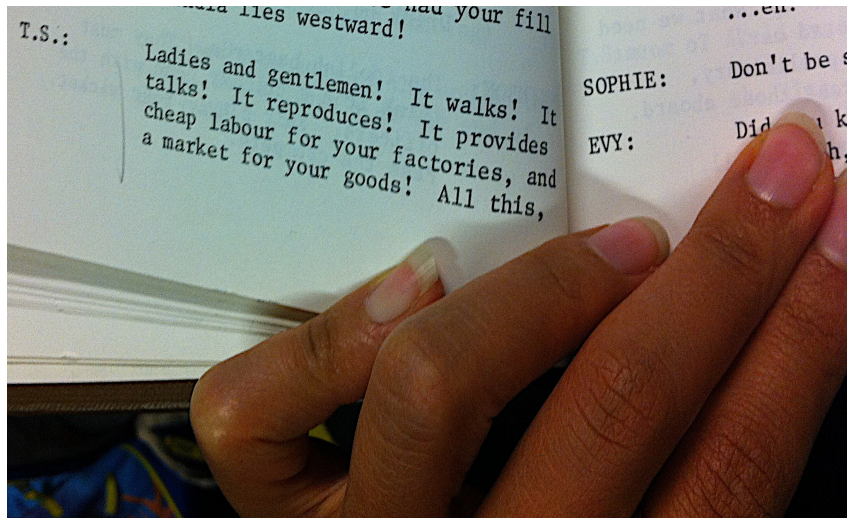


Figure 68: Sharon Pollock's *Komagata Maru Incident* at 36. Photo by Preeti.

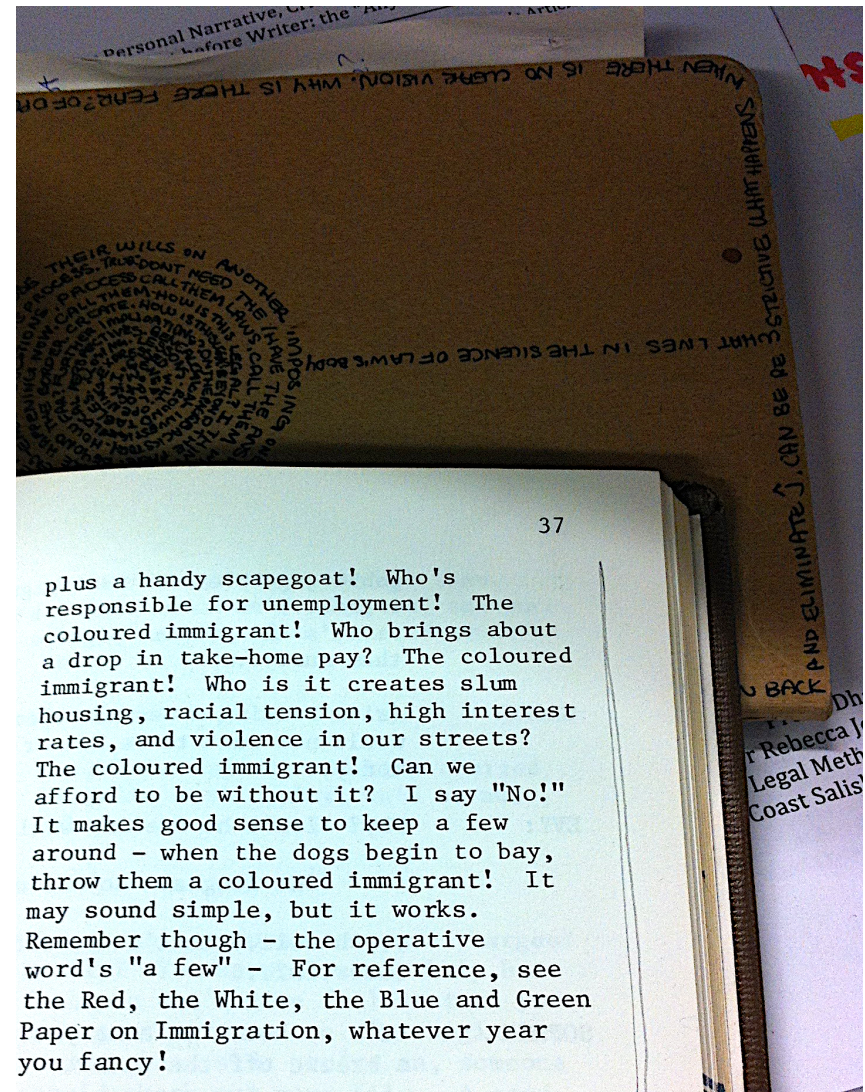


Figure 69: Sharon Pollock's *Komagata Maru Incident* at 37. Photo by Preeti.

We embody jurisprudence just as we embody memory.
Jurisprudence is part of our memory.

Justice

Martin: ...acquaintance with the subject shows that the better classes of the Asiatic race are not given to leave their own countries – they are non-immigrant classes, greatly attached to their homes, and **those who become immigrants are, without disparagement to them, undesirables in Canada,** where a very different civilization exists; **the laws of this country are unsuited to them and their ways and ideas may well be a menace to the well-being of the Canadian people** [emphasis added].³³⁸

How we understand and respond to law is part of memory. Embodied memory “exceeds the archive’s ability to capture it” but it doesn’t subsequently disappear.³³⁹ It grows and exists in different ways, through iteration and internalization of both the performers and the spectators, replicating itself through its own structures and codes, and a variety of selection processes. In this way, embodied and performed acts generate, record and transmit knowledge. Performance offers alternate stories to memorize and internalize but also prods those who perform and witness to question what has already been memorized and internalized.

As though language could conceal our skin.

In kindergarten, teachers said we were all the same but as a young Punjabi child seeing people like me in lower paying jobs, treated worse in grocery stores, living in separate and segregated spaces, I absorbed social structures as part of who I was. T.S.’s speech on the previous page (Figures 68 and 69) does not simply reflect what Pollock is able to witness as a white woman but reflects what brown bodies witness and quite often internalize. This internalization is repertoire. It exceeds the legal archive’s ability to catch it but lives as a consequence of that same archive. Performance then offers space to embody, witness and investigate how the archive impacts our bodies – how jurisprudence lives in our bodies but also how trauma and entitlement related to law live in our bodies.

As though language could conceal our skin.

I used to consider repertoire to be the way my shoulders vibrate when I move to English songs, my body having learned Bhangra first, a Punjabi dance that lives in my shoulders’ repeated motions (up-and-down, up-and-down), various arm extensions and the rhythm I choose for shifting my feet. Repertoire was the way my hands come together to greet someone before the words sath sri akaal (truth is immortal) escaped my mouth. Repertoire was positive – a way that I carry culture and ceremony in my body, in contrast – and even resistance – to the archive.

I hadn’t considered the archive’s impact on what unselected repertoire I carry, however. I hadn’t considered the internalizations and embodiments I didn’t consciously choose about my culture, my race and myself. I hadn’t considered the relationship between internalized racism and repertoire – the way I embody race because of what I learned and absorbed from family, community and the world around me.

Shame.
Shame and self contempt.
Nausea.

When they like me, they tell me my color has nothing to do with it.

When they hate me, they add that it's not because of my color.

Either way, I am a prisoner of the vicious cycle.

- Frantz Fanon, *Black Skin, White Masks* -
[spacing and emphasis added]³⁴⁰

While the Indians in Rode's play are not ashamed of who they are, they are humiliated by circumstances: for being turned away, for trusting British Law, for leaving without achieving what they were seeking. Hopkinson hates himself for who he is whereas the Indians develop shame due to circumstances, based on what is done to them. This culminates in Mewa Singh killing Hopkinson, motivated by his inability to help those on the ship and by Hopkinson's disregard for the passengers. Rode's play thus shows men of both races driven to violence via shame.

"...present in the lives of traumatized people[:]"

[-] They are unable to overcome the anxiety of their experience.

[-] They remain overwhelmed by the event, defeated and unable to reengage in life.

[-] Others who experience the same event may have no enduring symptoms at all."

Peter Levine, *Waking the Tiger: Healing Trauma: The Innate Capacity to Transform Overwhelming Experiences*³⁴¹

VOICE: Mr. William C. Hopkinson
[Hopkinson feels happy]

VOICE: White
[Hopkinson smiles]

VOICE: English
[Hopkinson very happy, laughs]

VOICE: Mr. William C. Hopkinson, the true son of the Canadian government, obedient, loyal to the British empire
[Hopkinson proud, points his thumb towards his chest]

VOICE: Loyal Mr. Hopkinson, imagine the palace of British empire. White, grand, high.
[Hopkinson nods, shows pride on his face]

VOICE: Loyal and obedient Hopkinson, a crack has appeared in the palace.
[Hopkinson gets up at once. His face is serious and questioning]

VOICE: Who caused this crack?the Komagata Maru. [...] Yes, Hopkinson, the Komagata Maru is not an ordinary incident. The whole World has watched it. [...] The great palace should remain great and white forever; is that not what you want?
[Hopkinson nods]

VOICE: And Hindus, on their knees, should rub and polish it day and night to keep it brilliant?
[Hopkinson nods more]

VOICE: But never enter it.
[Hopkinson nods still more to express agreement]

Figure 70: Scene between Hopkinson & Voice in Ajmer Rode's play, *Komagata Maru* at 126.

In this scene (Figure 70), the idea of whiteness is performed verbally by the Voice and physically through Hopkinson's body. As the disembodied Voice utters words associated with power, superiority and whiteness, Hopkinson expresses happiness with smiles and laughter. The Voice reifies whiteness, naming Hopkinson's familial relationship to the Canadian government and loyalty to the British empire. Hopkinson's body does not respond to his being half-Hindu but to the compliments and supremacy of whiteness being attributed to him. As whiteness is hierarchized in relation to Hindus who should polish its palace "on their knees," Hopkinson's mood heightens: he points his thumbs at himself with pride.³⁴² In exposing Hopkinson's internalized racism – his shame of being half-Indian – through Hopkinson's body, both plays stage one way white supremacy embeds itself in the body politic but also in government policies and logic.

Performance disrupts law's interpellative trajectory, the process by which law's ideology (embodied by its institutions) constitute its subjects' identities by drawing them into its interactions and normative universe. The aesthetics and voiced internal monologues offer transparency in technologies that produce citizen and non-citizen. They transform "legal performatives into embodied realities" so that "the body disrupts the interpellative trajectory of the law in order to posit and present alternatives."³⁴³ Aesthetics and performance thus offer a tool with which to embody, imagine and rehearse different possibilities by emphasizing how the mind and body are not separate entities.³⁴⁴

Racist Laws Live in Our Bodies: Repealed Doesn't Mean Disappeared

In UBC's recorded production of three *Komagata Maru* plays (mentioned near the beginning of this chapter), I was most drawn to a scene from Rode's original Punjabi play.³⁴⁵ This scene has sadly been omitted from the English translation I read for my analysis, yet watching it on screen allowed me to experience it differently than the text I read. The scene begins with an elderly Punjabi man looking for something. A young Punjabi woman comes along and asks if the man has lost his way. He tells her he hasn't but asks if they are on 2nd Avenue – does she know where the 2nd Avenue Gurudwara is? The audience learns that the temple was knocked down and replaced by apartment buildings some years prior.

"Are we anything to people here?" he asks.³⁴⁶

The old man explains the temple's significance, explaining how it was a meeting place for all "Hindustanis," people who sacrificed everything for the *Komagata Maru*, including their lives. He had been a passenger on the *Komagata Maru* and hadn't returned since his 1914 deportation but wanted to visit the temple before he died. The young woman wants to hear his story to learn this history but the old man refuses to share, telling her it isn't just a novel he can read to her:

**"It is a kind of truth that burns like a fire.
Even now, there is so much injustice
so much prejudice.
So many people must live their lives tasting the
bitterness of disrespect."**

- Rode, *Komagata Maru*, onscreen translation in "Performing the *Komagata Maru*: Theatre and the Work of Memory."³⁴⁷

Click here to view: <https://www.youtube.com/watch?v=YZqhKWBUMCY>

This deleted scene performs everything I've attempted to say.

In the body, we can uncover a history that doesn't lie in the archive. Rather than reducing law to the discursive or to a narrative description, performance brings gestures and embodied practices into ways of doing, thinking, and being. If we pay attention to details, accidents, and errors – to bodies erased by history – through theatre and performance, we can find "something altogether different" from dominant practice and the state's legal narrative, including landscapes of counter-memory situated in and affected by that narrative.³⁴⁸

I saw Ajmer Rode at a book launch while writing this chapter (after not having seen him for 20 years). I told him I lamented the loss of this scene, a scene that shows how law lives in the body, that communicates the pain and trauma so many of us feel but cannot name because we haven't the language or haven't been given the tools. Replacing this scene with poetry excerpts, in my view, made the English translation a text to be read and not performed.

Ajmer Uncle listened and smiled, a smile that always made me mix him up with Amreek Uncle, the other Punjabi Uncle with a mole on his face who was always smiling. They were the happiest Punjabi Uncles I had, or at least that I can remember. I don't know why we stopped seeing them after I turned 10. Oh well. They are also good friends so when I told them I had always confused them, they embraced, laughed, looked one another in the eye and said, "How wonderful" before continuing the conversation with one arm around the other.

Still smiling, Ajmer Uncle tells me I should do a PhD in theatre and that he is currently translating Sharon Pollock's play into Punjabi. Then he tells me to wait and comes back with his newest publication: *A Journey with the Endless Eye: Stories of the Komagata Maru Incident*, illustrated by Jarnail Singh. I open it and see pictures, poetry, an inscription, a story on each page. I'm delighted and at the same time wished women would take a greater role in these spaces, both at the book launch and in this publication. I wonder if he will translate Pollock's play with his wife (she's the other English translator for his play).

Like my experience of meeting Ajmer Rode 20 years later, the omitted scene from Rode's play demonstrates how the *Komagata Maru* lives in the present. The old man presents a moment of complexity between the legal and aesthetic imagination, opening up the historic difficulty of **erasures** that rupture relations between past generations and current generations. The scene affected me because it is "deeply intuitive" in the way it "synthesizes the complexities of experience and the challenges of

addressing deep human dilemmas."³⁴⁹ This scene stood out because it is "not...defined by the analytical endeavour" but rather has a deeply affective component, the place between words and feeling where it's "almost as if you are gazing at a piece of art, listening to a piece of music, or hearing a line of a poem."³⁵⁰ By showing how the continuous journey legislation still lives in the old man's body, the scene's performance shifts focus from a written legal culture to an embodied and affective one.

This elderly man offers insight into the genealogy of the *Komagata Maru*. Stories and knowledge "situated within the articulation of the body and history" expose how a body is "totally imprinted by history and the process of history's destruction of the body."³⁵¹ In this scene, experience is history and theatre is not just story but a performance of law.

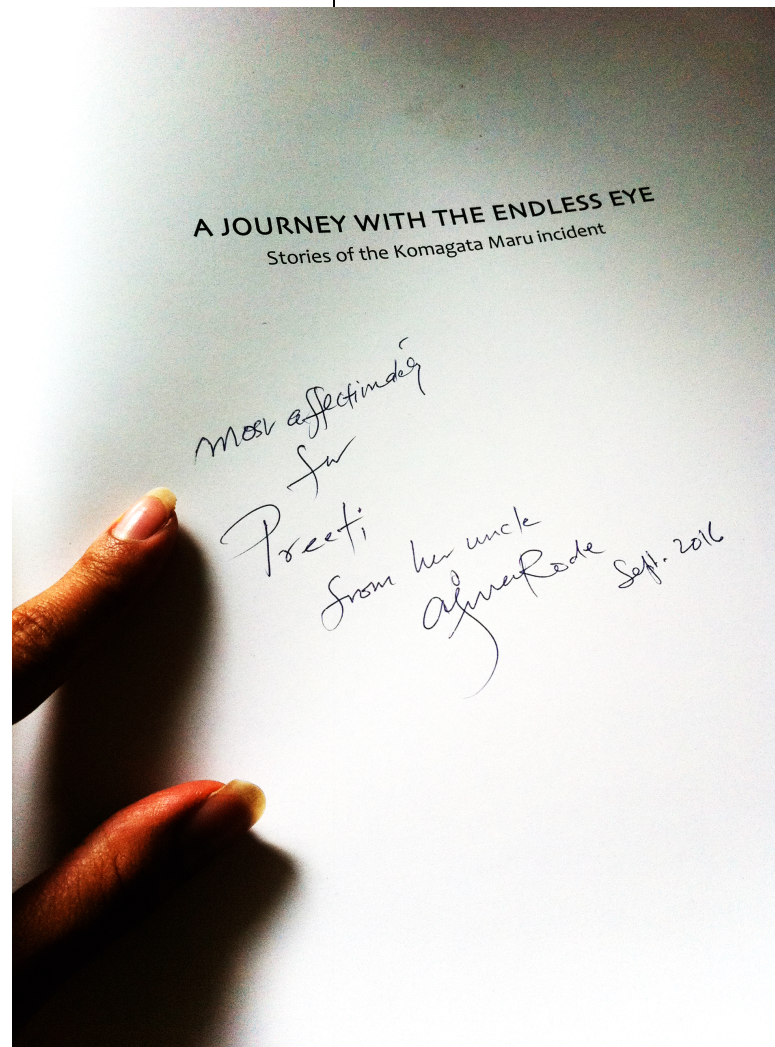


Figure 71: Inscription from Ajmer Rode to me in *A Journey with the Endless Eye: Stories of the Komagata Maru Incident*. Photo by Preeti.

I watched a lot of Netflix when I first wrote the end this chapter – How to Get Away with Murder in particular and the season premiere of Grey’s Anatomy. I watch Netflix when I need to turn off, escape for a while. I’m not sure I do but it helps. I watched both of these shows with admiration for Shonda Rhimes, Executive Producer of the former; Creator, Head Writer and Executive Producer of Grey’s. Rhimes explores the complexities of trauma on individual, interpersonal and societal levels through her characters: their ugliness, their hate, their bonds, their inability to escape trauma, their inability to name it. Most of them don’t talk openly about their trauma – something I noticed while working in law myself: we don’t talk about what haunts us, occasionally attending counselling sessions but most of the time burying it deeper and deeper until its manifestation rears its ugly head or beautiful heart at an inopportune or absolutely sacred moment.

Netflix escapism?

Trauma does two things: it makes us more human in the best of ways and makes us more human in the worst of ways. I wonder about Hopkinson’s trauma as I sometimes wonder about white men’s trauma, the trauma of powerful people, those who carry unearned systemic advantages: the emptiness that fills a body when

society tells you that you are good but you don’t know why or how; the trauma that fills you when your bad behaviours and mistreatment of others are condoned or overlooked – until you decide to face yourself but by then you haven’t built the tools or ability to deal with it, leaving you to wallow in your internal ugliness or exert your power in harsher ways to further avoid the ugliness. Rhimes offers her audiences opportunities to love

and understand the ugliest parts of people by creating characters we love even though they do and say hideous things to one another. She creates characters who move to the highest, most noble realms of capitalism – law and medicine – and try to hide pasts of trauma but can’t.

I lament not having an opportunity to love Hopkinson in either play, to not see him on stage, embodied and performed. I lament not finding a single redeeming quality despite feeling some empathy and sympathy. Perhaps I glossed over it and need to read both plays again, but really, I need to see them performed. I was able to develop a love for Evy in Pollock’s play and the deleted old man in Rode’s play because I was able to see and feel their complexities through

the page and in the video recordings. Hopkinson, unfortunately, was only a villain to me, and not a loveable one.

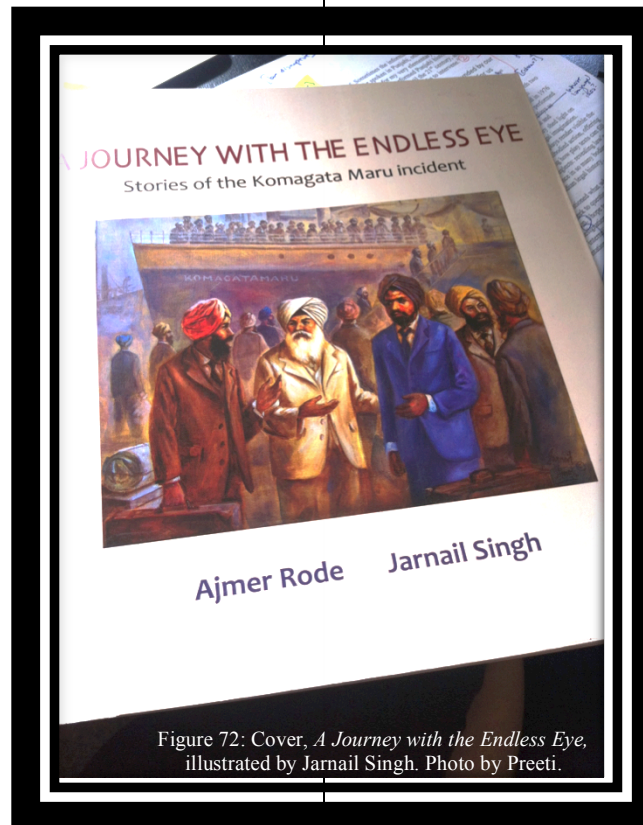


Figure 72: Cover, *A Journey with the Endless Eye*, illustrated by Jarnail Singh. Photo by Preeti.

Broken Legal History? Try Applying a Cast Post-Trauma

To encompass, stabilize or hold historical structures until healing is confirmed:

1. Listen*
2. acknowledge
3. understand
4. work harder to understand
5. create and/or change: desire transformation
6. apologize (if you are able and willing to do #5 in a meaningful way)
7. don't forget
8. listen again with renewed understanding.
9. check yourself: did you change?
10. Repeat.

Finding language through sensation and affect, art promotes an understanding of trauma by conveying something of the experience of traumatic memory.³⁵² Rather than closing off, containing and forgetting about historic wounds, art and performance teach people to collectively hold them. They can impart affective moments that a spectator's body retains even if the mind forgets. By containing wounds while encompassing them, art and performance attempt to represent the unrepresentable so that society may find time and space to begin remembrance, acknowledgment, healing and change.

* Listen to others (consider performing additional, personal and proactive research in addition to listening), or listen to yourself but only when you are ready to hear the silence, rage, sorrow, forgotten places that need to speak from your body. Do not ask when someone is not ready. Do not excavate when you are not ready. Do not excavate at all, only listen to gifts when they are offered.

Traumatic symptoms are not caused by the 'triggering' event itself.

They stem from the frozen residue of energy that has not been resolved and discharged.

Peter Levine, *Waking the Tiger: Healing Trauma: The Innate Capacity to Transform Overwhelming Experiences*³⁵³

Prime Minister Justin Trudeau:

Just as we apologize for past wrongs, so too must we commit ourselves to positive action - to learning from the mistakes of the past, and to making sure that we never repeat them.

- Komagata Maru Apology, May 18, 2016

Both playwrights use theatre to defy the erasure of human life in law, as well as the erasure of human lives in *Munshi Singh* – of the passengers, the woman on the ship, the child on the ship. They create space to embody and re-embodiment stories that occurred in law and because of law but also create new stories that are law: embodied narratives that offer audiences ways to live and reflect on how we live.

A few years ago I heard Ujjal Dosanjh speak in Toronto at an event titled “Why Apologizing for Historical Wrongs is Not the Answer.”³⁵⁶ While he acknowledged that apologies have an emotional impact, he questioned whether they were effective and useful, suggesting that the energy individuals and communities put into requesting national apologies for the past could be better directed to social equality in the present.³⁵⁷

**“People don’t need a definition of trauma;
we need an experiential sense of how it feels.”**

Peter Levine, *Waking the Tiger: Healing Trauma: The Innate Capacity to Transform Overwhelming Experiences*³⁵⁴

Many spectators are more able and willing to face long-denied or long-unknown truths – erasures they have embodied and normalized - when presented to them in a fictional setting, when they can distance themselves and make the story make-believe, and slowly unpack it on their own terms.³⁵⁵ Through arts-based research, Pollock and Rode confront audiences with the racialized state of exception created by state laws in the form of “fictional” and historical stories.

By exploring racism and legal erasures through the affect and aesthetics of performance, Pollock and Rode show how powerful institutional forces capture the human imagination, our dreaming capacities, our space for collective imaginings.³⁵⁸ By concerning themselves with praxis, “the way that ideas are generated within historical context and play a substantive role in bringing about historical change,” they reveal how economic and ideological ideas underpinning state laws are embodied.³⁵⁹ They offer mirrors to the lies law tells itself as well as potential ways to live and re-embodiment our interpersonal relations, impacts, responsibilities.

At the heart of law is story. Written and performed, both plays show narrative's capacity to hold history, "to reveal, organize and create meaning" through story. The way "we isolate facts, build histories, and contextualize events" develops our relationship to truth, understanding of others, and experiences between us and others.³⁶⁰ The production of Pollock and Rode's plays demonstrates that "law cannot own all words, nor can law control all the images that words store and unleash" because "all texts, all laws, are enigmatic" and "say more than they show."³⁶¹ Both playwrights use theatre to show their lived and studied research to the public, to begin collective imagining, to step beyond law's limiting and limited written spaces.

We need theatre to reconcile state law's erasure of embodied action.

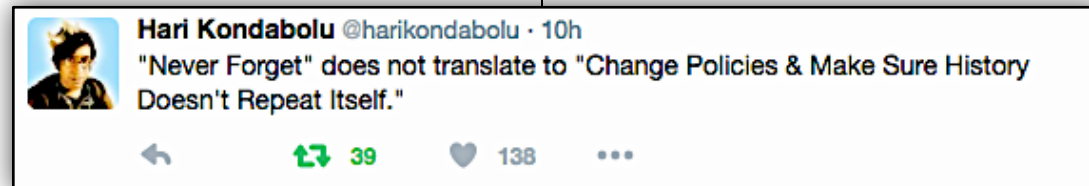


Figure 73: Screenshot of Tweet by Hari Kondabolu (2016).

**“[Trauma] happens first
and foremost
in the body.”**

- Gabor Mate's foreward in *In an Unspoken Voice: How the Body Releases Trauma and Restores Goodness*³⁶²

Can law become traumatized? What does it mean when law becomes stagnant, stuck, unresponsive or reactive, detached from the people?

And if law can become traumatized, what can we do to heal it?

**“The salvation, then, is to be found in
the body.”**

- Gabor Mate's foreward in *Waking the Tiger: Healing Trauma: The Innate Capacity to Transform Overwhelming Experiences*³⁶³

“...four components of trauma that will always be present to some degree in any traumatized person:

1. hyperarousal
2. constriction
3. dissociation
4. freezing (immobility), associated with the feeling of helplessness.

...when experienced together over an extended period of time, they are an almost certain indication that we have experienced an event that has left us with unresolved traumatic residue.”³⁶⁴

Prime
Minister
Justin
Trudeau:

Mr. Speaker, Canada cannot solely be blamed for every tragic mistake that occurred with the *Komagata Maru* and its passengers.

But Canada's government was, without question, responsible for the laws that prevented these passengers from immigrating peacefully and securely.

For that, and for every regrettable consequence that followed, we are sorry.

- *Komagata Maru* Apology, May 18, 2016

Within a few days of Trudeau's *Komagata Maru* apology, "the elbow incident" overshadows the *Komagata Maru* incident: newscasters announce the Prime Minister's accidental elbowing of a female Member of Parliament for several days.³⁶⁵ The *Komagata Maru* disappears, again.

But trauma does not lie in the *Komagata Maru* incident. Trauma "does not reside in the external event that induces physical or emotional pain[.]"³⁶⁶ And it cannot be healed by the *Komagata Maru* apology because trauma also does not live solely in the pain itself.³⁶⁷

Trauma lives in our responses to painful events. It lies in our inability to release blocked energies. It lies in the absence of spaces to move through "physical/emotional reactions to hurtful experience."³⁶⁸ So "trauma is not what happens to us, but what we hold inside in the absence of an empathetic witness."³⁶⁹ Theatre offers presence, a way to move through our responses in space, with body, physically and emotionally.

Legal Trauma: Transformation Manual

1. Find the same energies that create symptoms of trauma
2. Develop creative, non-violent ways to engage and mobilize the symptoms
3. Transform, propel into healing, mastery, even wisdom

we humans have the innate capacity to heal
ourselves
our world.³⁷⁰

Jurisprudential theatre offers a way to approach personal and collective wounds with safety – touch the edges, create representations, embody and envision past, present and desired experiences. In this chapter, Rode and Pollock's plays demonstrated how research-based theatre defies legal erasure and already creates new meaning, new narrative and new law with stories, bodies and experiences. In Chapter 2, *Re-embodying* showed a creative response to various event-based and endemic racial traumas that live in my body, particularly those experienced in elite white spaces of higher education and legal practice. *Re-embodying* gave me and my pain witness through an aesthetic experience, visually but also literally as I was touched by people's empathic responses and the learnings they sometimes spoke aloud, sometimes tweeted and sometimes walked away with slightly changed. These experiences made it possible for me to create the first draft of a play that Eustitia will tell you about in just a few pages.

²¹⁴ Preeti Dhaliwal, "Comment: Apologies and the Komagata Maru", *Times Colonist* (24 May 2016) online: Times Colonist <<http://www.timescolonist.com/opinion/columnists/comment-apologies-and-the-komagata-maru-1.2261192>>.

²¹⁵ In (2015) 2:6 *NAVEIN REET: Nordic Journal of Law & Social Research* at 88.

²¹⁶ See Renisa Mawani, "Specters of Indigeneity in British-Indian Migration, 1914" (2012) 46:2 *Law & Society Review* 369; see also Maia Ramnath, *Haj to Utopia: How the Ghadr Movement Charted Global Radicalism and Attempted to Overthrow the British Empire* (Berkeley: University of California Press, 2011).

²¹⁷ To learn about Turtle Island, see Leanne Simpson, *Dancing on our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence, and a New Emergence*, anonymous translator (Winnipeg: Arbeiter Ring Pub, 2011).

²¹⁸ See Renisa Mawani, "'Cleansing the Conscience of the People': Reading Head Tax Redress in Multicultural Canada" (2004) 19:2 *Canadian Journal of Law and Society/Revue canadienne droit et société* 127 at 140.

²¹⁹ *Munshi Singh, Re*, [1914] 20 BCR 243 (BCCA), 1914 CarswellBC 255 [*Munshi Singh*]. Having searched law library and legal search engines, including WestLawNext Canada and LexisNexis Quicklaw, no articles on *re: Munshi Singh*, aside from an excerpt in an Immigration law textbook and one chapter in Christopher Moore, *The British Columbia Court of Appeal: the first hundred years, 1910-2010* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History, 2010) come to surface.

²²⁰ Hugh Johnston, *The Voyage of the Komagata Maru: The Sikh Challenge to Canada's Colour Bar* (Vancouver: UBC Press, 2014) at xiii.

²²¹ Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia*, 2nd ed (Montreal: McGill-Queen's University Press, 1990). Note: a third edition of this book was published in 2002.

²²² *Ibid* at ix.

²²³ Ali Kazimi, dir, *Continuous Journey: A Film*, DVD (Canada: Peripheral Visions Film and Video, 2004); Ali Kazimi, *Undesirables: White Canada and the Komagata Maru, an Illustrated History* (Vancouver: Douglas & McIntyre, 2012); Johnston, *supra* note 203; Hugh Johnston,

"The *Komagata Maru* and the Ghadr Party: Past and Present Aspects of a Historic Challenge to Canada's Exclusion of Immigrants from India" (2013) 178 *BC Studies* 9.

²²⁴ Simon Fraser University, online: *Komagata Maru: Continuing the Journey* (2011) <<http://komagatamarujourney.ca/>>.

²²⁵ Constance Backhouse, *Colour-coded: a Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999) at 8.

²²⁶ See Joshua Takano Chambers-Letson, *A Race So Different: The Making of Asian Americans in Law and Performance* (New York: NYU Press, 2013) at 6; see also J.L. Austin, "Performative Utterances," *Philosophical Papers* (Oxford: Clarendon Press) 1961 at 220-239.

²²⁷ Translated by Constance Farrington (New York: Grove Press, 1963) at 36-7.

²²⁸ Michel Foucault, "Two lectures" in Colin Gordon, ed. *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, trans. Colin Gordon et al. (New York: Pantheon, 1980) at 83.

²²⁹ See Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999) at 39.

²³⁰ *Ibid* at 39.

²³¹ Sharon Pollock, *The Komagata Maru Incident* (Playwrights Canada: Toronto, 1985); Ajmer Rode, *Komagata Maru*, Ajmer Rode & Surjeet Kalsey, transl (SFU Library: Vancouver, 1985). Note: Rode's play was serialized in 1982, *Indo-Canadian Times*, a Punjabi weekly newspaper published in Surrey, British Columbia; published in 1984 in Punjabi by Nanak Singh Pustak Mala; and produced in July 1986 as a short radio play in Vancouver, Co-op radio station, FM 102.7.

²³² For more on racial unconsciousness, see Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (Cambridge: Harvard University Press, 1992) at xii.

²³³ *Ibid*; see also Faedra Chatard Carpenter, *Coloring Whiteness: Acts of Critique in Black Performance* (Ann Arbor: University of Michigan Press, 2014) at 9. A poem developed from Carpenter's prose. I took some words and left others.

²³⁴ Carpenter, *ibid*.

²³⁵ *Ibid* at 9.

²³⁶ *Ibid.*

²³⁷ *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11 [*Charter*]; see also *Constitution Act 19867* (UK), 30 & 31 Vict, c 3, s 91(24), reprinted in RSC 1985 App II, No 5.

²³⁸ See generally Kimberley Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color” (1991) 43:6 *Stanford Law Review* 1241.

²³⁹ Devon W. Carbado & Mitu Galati, *Acting White? Rethinking Race in “Post-Racial America”* (Oxford: Oxford University Press, 2013).

²⁴⁰ *Carpenter*, *supra* note 233 at 9.

²⁴¹ See Patricia J Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge: Harvard University Press, 1991).

²⁴² Someone suggested I footnote the bullet point discussing the question “Where are you from?” My journals are unpublished so I cannot direct you to all the vignettes I wrote while living in Montreal (amongst many places, but especially Montreal), to answer the question, “Where are you from” followed by, “No, but where are you really from?” I also cannot direct you to the conversations I had in my early twenties when dating someone who was half-black, half-white as we discovered what it meant to be racialized with words rather than isolated feelings in white spaces. I also cannot cite the conversations I facilitated and participated in during my years at McGill Law, both in a Womyn of Colour Writing Circle I founded or a Critical Race Theory class that I co-initiated and co-organized. In the academy, I need to cite others to make my words authoritative, to show that my thoughts are not isolated but common experiences worthy of attention and study. Citations also show the breadth of research I’ve done, the work I’ve done finding people who feel what I’ve been journaling about living for years. They also offer interested readers further sources, potential pathways for their own research. While my experiences are my own, the ideas and theories that emerge from them have been written about before, and the only reason I can articulate any of these thoughts is because of the people who took the time to write those words down. I cannot cite everyone I’ve ever read but have done the best I can and will gladly update this document if I have forgotten to give credit where it is owed. After writing all this, I realize such gifts are sacrificial because they often stem, in part, from a wound. If a citation helps honour that gift, letting the writer know I’ve seen

them or letting a reader know there is someone more who they can trust and lean on, I will do my best to record that. So finally, in addition to avoiding plagiarism, my citations offer respect to those who have graciously offered me stories, vocabulary and strength to begin articulating my thoughts and experiences.

²⁴³ Bruce A Arrigo, “De/Reconstructing Critical Psychological Jurisprudence: Strategies of Resistance and Struggles for Justice” (2010) 6:4 *International Journal of Law in Context* 363 at 366.

²⁴⁴ Erika Fischer-Lichte, “Introduction,” Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014) at 53.

²⁴⁵ UBC Asian Studies, “Performing the Komagata Maru: Theatre and the Work of Memory” (3 May 2014, University of British Columbia), online: YouTube <<https://www.youtube.com/watch?v=YZqhKW8UMCY>>.

²⁴⁶ Fischer-Lichte, *supra* note 244 at 49.

²⁴⁷ See Jacques Derrida, *Speech and Other Phenomena* (Evanston, IL: Northwestern University Press, 1973); see also *Of Grammatology* (Baltimore, MD: Johns Hopkins University Press, 1977); see also *Writing and Difference* (Chicago, IL: University of Chicago Press, 1978); see also *The Force of Law: The Mythical Foundations of Authority* (Paris: Galilee, 1991).

²⁴⁸ *Supra* note 243 at 366.

²⁴⁹ Rode, *supra* note 231 at ii.

²⁵⁰ See Norman K Denzin, “The call to performance” (2003) 26:1 *Symbolic Interaction* 187 (Jstor).

²⁵¹ Anne Murphy, “Performing the Komagata Maru: Theatre and the Work of Memory” (2015) 40:1 *SCL/ÉLC* at 46.

²⁵² See Fischer-Lichte, *supra* note 244 at 54.

²⁵³ Sharon Pollock, Ajmer Rode et al, “Performing the Postcolonial” (Playwrights’ Panel delivered at St. John’s College, University of British Columbia, 3 May 2014) cited in Murphy, *supra* note 251 at 57.

²⁵⁴ George Belliveau, “Investigating British Columbia’s Past: *The Komagata Maru Incident* and *The Hope Slide* as Historiographic Melodrama” (2003) 137 *BC Studies* 93 at 97.

²⁵⁵ *Munshi Singh*, *supra* note 219 at 81.

²⁵⁶ *Ibid.* The Court takes a bold step by reviewing the Board of Inquiry's decision, contrary to the *Immigration Act*. The nature of such reviews is still highly contested – what standard will be used? Should the Board's decision simply be reasonable? Should the Court be deferential? When does the Board have to be correct rather than reasonable? Is it even the Court's place to be reviewing such decisions? Doesn't it lack the expertise? Nowadays, deference is given on issues of credibility and fact but not on questions of law – not when the wrong law is applied or when the applicable law is understood incorrectly. The law applied must be correct but the story – the way it is recorded and understood – need not be: see generally *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*].

²⁵⁷ *Munshi Singh*, *supra* note 219 at para 20.

²⁵⁸ *Ibid* at para 21.

²⁵⁹ *Ibid* at para 22. Of note, the Court cast a positive light on these orders. Justice Irving said the three orders are not absolute prohibitions, explaining that No. 23 shows how an immigrant may come into Canada by coming direct or prepaying his passage in Canada; No. 24 permits an Asiatic having more than \$200 to come in; and No. 897 is a temporary measure in force for a limited period, and applicable only to the coast of British Columbia and confined to a certain class of persons (see para 25, emphasis added).

²⁶⁰ *Ibid* at para 87.

²⁶¹ *Ibid.*

²⁶² The Court held that the orders were all passed pursuant to sections of the *Immigration Act* that permitted the Canadian government to create conditions for immigrant and tourist entry to Canada. Of interest, when the Court states that the “King” is permitted to make the laws in question, it is, in fact, asserting Canadian sovereignty and saying Canada's Parliament may make such laws. It discretely asserts that Canadian citizenship differs from British citizenship by excluding British subjects from entering. British subjects were therefore not inherently Canadian because Canada had its own jurisdiction. This meant the Canadian government, judiciary and military could perform sovereignty through exclusion on their own terms: see *Munshi Singh*, *supra* note 219; see also Moore, *supra* note 219 at 55.

²⁶³ *Ibid*, Moore at 53-5.

²⁶⁴ *Ibid* at 55.

²⁶⁵ Pollock, *The Komagata Maru Incident*, *supra* note 231 at “Playwright's Note” (unnumbered).

²⁶⁶ See Georgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005); see also Vincent Jungkunz, “The Racialized State of Exception” (2013) SSRN, 2014 National Conference of Black Political Scientists (NCOBPS) Annual Meeting.

²⁶⁷ Agamben, *ibid* at 56.

²⁶⁸ See generally *ibid* at 56.

²⁶⁹ See *Dunsmuir*, *supra* note 256 at paras 34-50.

²⁷⁰ *Munshi Singh*, *supra* note 219 at para 12.

²⁷¹ *Ibid* at para 13.

²⁷² *Ibid.*

²⁷³ (Indianapolis: Indiana University Press, 1989) at 94.

²⁷⁴ Jungkunz, *supra* note 266 at abstract; see also Agamben, *supra* note 266.

²⁷⁵ *Ibid*, Jungkunz.

²⁷⁶ *Munshi Singh*, *supra* note 219 at para 38 [emphasis added]

²⁷⁷ Karen Crawley, & Honni Van Rijswijk, “Justice in the Gutter: Representing Everyday Trauma in the Graphic Novels of Art Spiegelman” (2012) 16:1 Law Text Culture 93 (Heinonline) at 94.

²⁷⁸ Backhouse, *supra* note 225 at 7.

²⁷⁹ *Ibid.*

²⁸⁰ Thomas Ross, *Just Stories: How the Law Embodies Racism and Bias* (Boston: Beacon Press, 1996) at 1.

²⁸¹ Robert Cover, “The Supreme Court 1983 Term -- Foreord: Nomos and Narrative” (1983-84) 97 Harvard Law Review 4 (Heinonline).

²⁸² Ross, *supra* note 280 at 14.

²⁸³ John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford: Oxford University Press, 2005) at 69.

²⁸⁴ Monica Prendergast & George Belliveau, “Poetics and performance” in Audrey Trainor & Elizabeth Graue, eds, *Reviewing Qualitative Research In The Social Sciences* (New York: Routledge, 2013) at 23.

²⁸⁵ Pollock, *Komagata Maru Incident*, *supra* note 231 at “Playwright’s Note” (unnumbered); Rode, *supra* note 231 at i; see also Ramnath, *supra* note 216 at 3, 47-48.

²⁸⁶ Rode, *ibid.*

²⁸⁷ Crawley & Van Rijswijk, *supra* note 277 at 95.

²⁸⁸ *Ibid* at 95.

²⁸⁹ *Ibid.*

²⁹⁰ Correctional Service Canada, “Volunteer Orientation: Pre-Orientation Reading Assignment” (Dec 2005) at 5.

²⁹¹ Murphy, *supra* note 251 at 57.

²⁹² See generally Sherene Razack, *Race, Space, and the Law: Unmapping a White Settler Society*. (Toronto: Between the Lines, 2002).

²⁹³ Sherrill Grace & Gabriele Helms, “Documenting Racism: Sharon Pollock’s *The Komagata Maru Incident*” in *Painting the Maple: Essays on Race, Gender, and the Construction of Canada*, Veronica Strong-Boag et al, eds, (Vancouver: UBC Press, 1998) at 95.

²⁹⁴ Murphy, *supra* note 251 at 61.

²⁹⁵ *Munshi Singh*, *supra* note 219 at para 5.

²⁹⁶ Ross, *supra* note 280 at 21.

²⁹⁷ *Ibid.*

²⁹⁸ *Munshi Singh*, *supra* note 219 at paras 140, 144.

²⁹⁹ *Ibid* at para 141.

³⁰⁰ *Ibid.*

³⁰¹ Pollock, *supra* note 231 at “Playwright’s Note” (unnumbered).

³⁰² See Chambers-Letson, *supra* note 226 at 4-5.

³⁰³ (1940) 9 American Law Society Review 590, as reprinted in *Jurisprudence* (1962) at 372.

³⁰⁴ *The Encyclopedia Britannica* (1910), 11th ed, vol 2 at 749 cited in *Munshi Singh*, *supra* note 219 at para 144, McPhillips JA.

³⁰⁵ Edward Frewen, “Our race and Language” cited in *ibid*, McPhillips JA.

³⁰⁶ *Ibid.*

³⁰⁷ Frewen, *supra* note 305 cited in *Munshi Singh*, *supra* note 219, McPhillips JA.

³⁰⁸ I considered moving these stories to the footnotes in order to shorten the chapter. Part of me wanted to offer something extra to those who read footnotes thoroughly rather than selectively but then I realized many would miss the stories entirely. These stories are part of understanding how the past lives in the present, alongside the endemic forms of trauma, including racial trauma. They can’t be footnoted because they are crucial to my subject position and thus central to the relationship of trust and dialogue I am trying to build with my readers.

³⁰⁹ *The Encyclopedia Britannica* (1910), 11th ed, vol 2 at 749 cited in *Munshi Singh*, *supra* note 219 at para 143, McPhillips JA.

³¹⁰ Translated by Richard Philcox (New York: Grove Press, 1952, reprint 2008) at 70.

³¹¹ See Ward, *supra* note 221; see also Johnston, *supra* note 220; see also Moore, *supra* note 219; see also Hamar Foster, “Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927” in Hamar Foster & John McLaren, eds, *Essays in the History of Canadian Law: British Columbia and the Yukon*, vol 4 (Toronto: University of Toronto Press, 1995) 28 at 42, 76. see also Brian Egan, “Resolving ‘the Indian Land Question’? Racial Rule and Reconciliation in British Columbia” in Andrew Baldwin, Laura Cameron & Audrey Kobayashi, eds, *Rethinking the Great White North: Race, Nature, and the Historical Geographies of Whiteness in Canada* (UBC Press: Vancouver, 2011). When *Munshi Singh* was decided, BC’s settler society was committed to the production of white space: in fact, the Douglas treaties, designed by the colonial administration to take land from Indigenous people in the preceding half century, stated that the land was to become “the Entire property of the *White* people forever” (Egan, 228).

³¹² Egan, *ibid* at 227.

³¹³ Rode, *supra* note 231 at Act 1, scene 2, 26.

³¹⁴ *Ibid.*

³¹⁵ Pollock, *supra* note 231 at 17.

³¹⁶ *Munshi Singh*, *supra* note 219 at para 145.

³¹⁷ Backhouse, *supra* note 225 at 4.

³¹⁸ *But see* Jonathan Levy, “Theatre and Moral Education,” (1997) 31:3 *The Journal of Aesthetic Education* 65; George H. Szanto, *Theater & Propaganda* (Austin: University of Texas Press, 1978); see also Tim Prentki, “On the Nature of Dramatic Process: Rehearsing for Revolutions?” 20th Annual Summer Drama Education/Applied Theatre Institute (9 May 2016), University of Victoria, Victoria, Lecture [unpublished]. Prentki acknowledges that theatre can and has been used historically as a tool for propaganda and education in religion and politics.

³¹⁹ In Hart & Peggy Phelan, eds, *Acting Out: Feminist Performances*, (Ann Arbor: University of Michigan Press, 1993) 227 at 229.

³²⁰ Carpenter, *supra* note 233 at 9.

³²¹ Pollock, *supra* note 231 at 5.

³²² *Ibid*; see also Morrison, *supra* note 232.

³²³ Carpenter, *supra* note 233 at 19.

³²⁴ *Munshi Singh*, *supra* note 219 at paras 131, 148; see also *Quong Wing v Rex* [1914] 49 SCR 440, 6 WWR 270.

³²⁵ *Ibid*, *Munshi Singh* at para 146.

³²⁶ Mari Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 11:7 *Women’s Rights Law Reporter* at 10.

³²⁷ Pollock, *supra* note 231 at 25.

³²⁸ Pollock, *supra* note 231 at “Playwright’s Note” (unnumbered).

³²⁹ Sharon Pollock, “Playwright: Parasite or symbiont” in *Creating autobiography on stage*, Sherrill Grace & Jerry Wasserman, eds, (Vancouver: Talonbooks, 2006); Jaime Beck et al, “Delineating a spectrum of research-based theatre” (2011) 17:8 *Qualitative Inquiry* (SagePub) at 688; see also Sherrill Grace & Gabriele Helms, “Documenting Racism: Sharon Pollock’s *The Komagata Maru Incident*” in *Painting the Maple: Essays on Race, Gender, and the Construction of Canada*, Veronica Strong-Boag et al, eds, (Vancouver: UBC Press, 1998) at 89; see also Murphy, *supra* note 251 at 55.

³³⁰ Murphy, *supra* note 251 at 59.

³³¹ *Ibid* at 65.

³³² See Carpenter, *supra* note 233 at 29.

³³³ Original title; poem taken from lines spoken by Harsha Walia, “Sanctuary City: Dismantling the State?” (The City Talks: The Refugee Crisis and the Sanctuary City, delivered at Legacy Art Gallery, 21 January 2016) [unpublished]; see also Alex Boutilier, “CSIS highlights white supremacist threat ahead of radical Islam” (15 March 2015) *Toronto Star*, online: *Toronto Star*

<<https://www.thestar.com/news/canada/2015/03/15/csis-highlights-white-supremacist-threat-ahead-of-radical-islam.html>>.

³³⁴ Murphy, *supra* note 251 at 59.

³³⁵ See generally Judith Butler, “Performative Acts and Gender Constitution: An essay in phenomenology and feminist theory,” ed, Henry Bial, *Performance Studies Reader* (Routledge: London, 2004) at 154. Performance and feminist theories offer ways of examining how we inhabit and learn to live in our bodies. Butler argues that gender is not a stable identity or a locus of agency from which various acts proceed but rather an identity tenuously constituted in time, a “stylized repetition of acts” (154). Is race like gender? A performative accomplishment compelled by social sanction and taboo? Is it determined by nature, language and semiotics and the overwhelming history of white supremacy? If equated with colour, it is an immutable characteristic – one that people cannot change through clothing or even surgery for that matter so it cannot be “put on... daily and incessantly, with anxiety and pleasure” (156-7)? While race is not determined by the history of racism, the way history and law live in our bodies informs many of the cultural fictions we embody, as well as the acts we repeat, the social sanctions and taboos that regulate us and our ways of being.

³³⁶ See Chambers-Letson, *supra* note 226.

³³⁷ See Edward W Said, *Culture and Imperialism* (New York: Knopf, 1993).

³³⁸ *Munshi Singh*, *supra* note 219 at para 147.

³³⁹ Diana Taylor, *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham: Duke University Press, 2003) at 20.

³⁴⁰ Fannon, *Black Skin*, *supra* note 310 at 96.

³⁴¹ Peter A Levine, *Waking the Tiger: Healing Trauma: The Innate Capacity to Transform Overwhelming Experiences* (Berkeley, CA: North Atlantic Books, 1997) at 28.

³⁴² Rode, *supra* note 231 at 126-131.

³⁴³ Chambers-Letson, *supra* note 226 at 14.

³⁴⁴ See Leiboff, *supra* note 215 at 82 (Leiboff's discussion of the work of Polish theatre practitioner, Jerzy Marian Grotowski who defined actors as an *embodied mind*, is particularly relevant).

³⁴⁵ UBC Asian Studies, "Performing the Komagata Maru: Theatre and the Work of Memory" (3 May 2014, University of British Columbia), online: YouTube <<https://www.youtube.com/watch?v=YZqhKW8UMCY>>.

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*

³⁴⁸ Schneider, *supra* note 319 at 232.

³⁴⁹ Lederach, *supra* note 283 at 69.

³⁵⁰ *Ibid* at 69-70.

³⁵¹ Michel Foucault, *Language, Counter-Memory, Practice*, ed. Donald F. Bouchard (Ithaca: Cornell University Press, 1977) at 147.

³⁵² Jill Bennett, *Empathic Vision: Affect, Trauma, and Contemporary Art* (Stanford: Stanford University Press, 2005) at 2.

³⁵³ Peter A Levine, *Waking the Tiger: Healing Trauma: The Innate Capacity to Transform Overwhelming Experiences* (Berkeley, CA: North Atlantic Books, 1997) at 19.

³⁵⁴ *Ibid* at 24.

³⁵⁵ See Monica Prendergast & Juliana Saxton, "Seduction of the real: the significance of fiction in applied theatre" (2015) 20:3 *Research in Drama Education: The Journal of Applied Theatre Research* at 282.

³⁵⁶ Ujjal Dosanjh, "Why Apologizing for Historical Wrongs is Not the Answer" (14 March 2014) *Law Society of Upper Canada*, Toronto, ON.

³⁵⁷ Of note, Mr. Dosanjh explicitly did not include residential schools or comments on the Truth and Reconciliation Commission of Canada in these sentiments, instead directing his comments towards the Komagata Maru and Chinese Head Tax.

³⁵⁸ Philippe Couton & José Julián López, "Movement as Utopia" (2009) 22:4 *History of the Human Sciences* 93 at 100.

³⁵⁹ Ramnath, *supra* note 216 at 11.

³⁶⁰ Sherrill Grace, "Introduction" in Sherrill Grace & Jerry Wasserman, eds, *Theatre and AutoBiography: Writing and Performing Lives in Theory and Practice* (Talonbooks: Vancouver, 2014) at 17.

³⁶¹ Peter Goodrich, "Legal Enigmas – Antonio de Nebrija, e Da Vinci Code and the Emendation of Law" (2010) 30 *Oxford Journal of Legal Studies* 71 at 97.

³⁶² Gabor Maté, "Foreword" in Peter A Levine, *In an Unspoken Voice: How the Body Releases Trauma and Restores Goodness* (Berkeley, CA: North Atlantic Books, 2010) at xii.

³⁶³ *Ibid.*

³⁶⁴ Levine, *supra* note 341 at 24.

³⁶⁵ Dhaliwal, *supra* note 2.

³⁶⁶ Maté, *supra* note 362 at xi.

³⁶⁷ See *ibid.*

³⁶⁸ Maté, *ibid* at xii.

³⁶⁹ *Ibid.*

³⁷⁰ Levine, *supra* note 341 at 21.

Can we create an archive of feelings? Of feelings that lived and live in bodies? What if you went to the Vancouver City Archives and asked for Punjabi shame? Sadness? Hunger? Pain? Anger? Racialized pain? What would they hand to you? What could they hand me?

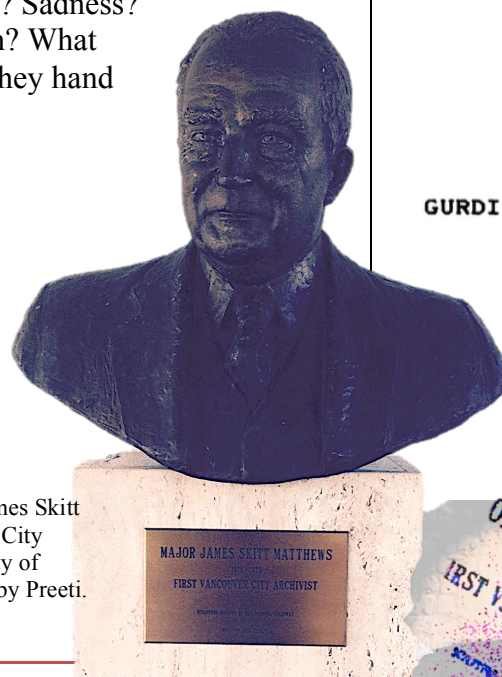


Figure 74: Bust of Major James Skitt Matthews, "First Vancouver City Archivist," at entrance of City of Vancouver Archives. Photo by Preeti.

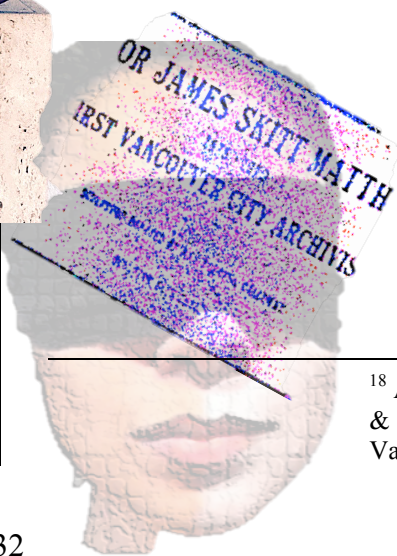
"How can one historicize affect?"

- Robin Bernstein, "Toward the Integration of Theatre History and Affect Studies: Shame and the Rude Mechs's *The Method Gun*"¹⁷

¹⁷ (2012) *Theatre Journal* 64 The Johns Hopkins University Press at 218.

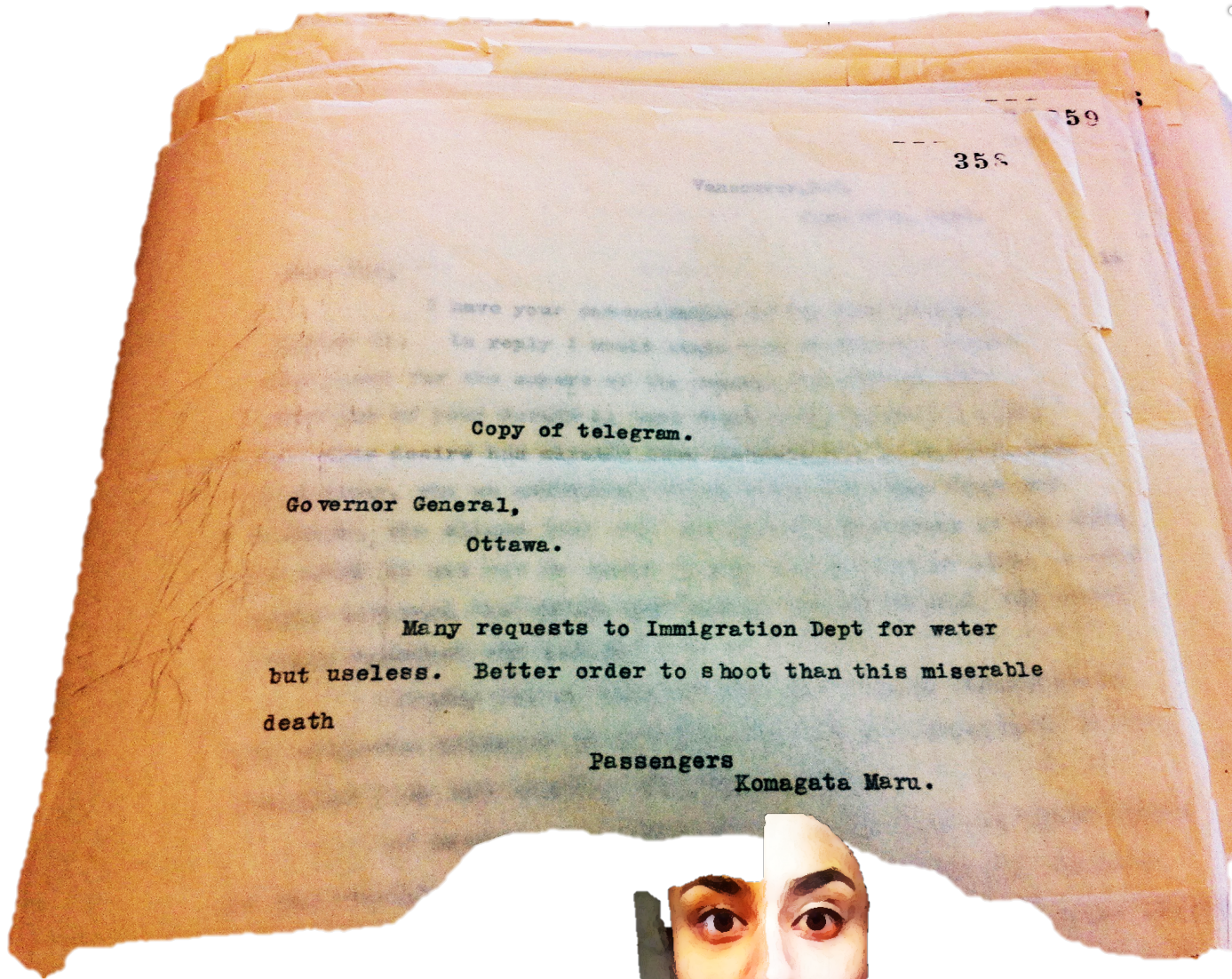
GURDIT SINGH:

It has become harder and harder to swallow the humiliation. If we Indians want to come to Canada, why aren't we allowed? Why so many hurdles? why? 18



¹⁸ Ajmer Rode, *Komagata Maru*, Ajmer Rode & Surjeet Kalsey, transl (SFU Library: Vancouver, 1985) at 60.

Witnessing



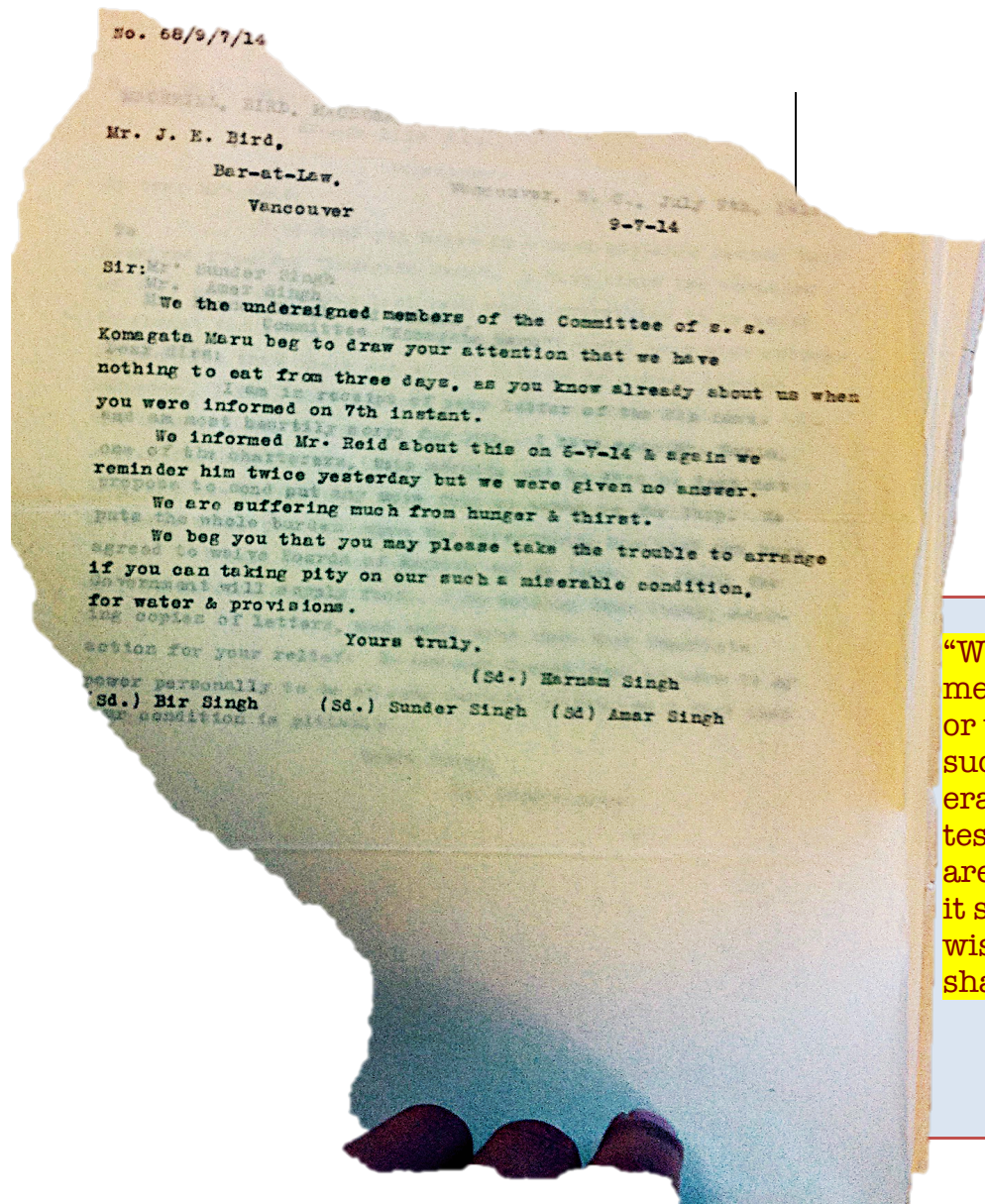
WOMAN:

See. Now they say I talk too much. I am nuts. But why can't I speak? Why? I'll tell the whole World. Come, see what they are doing to us, see this Justice, see with your own eyes, the great Justice. I'll speak even louder, much louder.¹⁹



Figure 75: Telegram from *Komagata Maru* passengers to Governor General Ottawa re: request for water (1914), City of Vancouver Archives. Photo by Preeti.

¹⁹ Ajmer Rode, *Komagata Maru*, Ajmer Rode & Surjeet Kalsey, transl (SFU Library: Vancouver, 1985) at 60.



“When we speak of art giving witness, we usually mean that we are attempting to give form, address or visibility to things that are often inexpressible such as the effects of terror, pain, destruction, and erasure. In this way, the idea of witness, of testimony, is seldom if ever linked to things that are wholesome in our cultures. We give testimony it seems to unveil the hidden, to restore the wished away, the instinct towards the erasure of shame.”

– Chris Abani, “Painting a Body of Loss and Love in the Proximity of an Aesthetic”²⁰

Figure 76: Letter from *Komagata Maru* passenger re: request for food (9 July 1914), City of Vancouver Archives. Photo by Preeti.

²⁰ In Marissa Johnson-Valenzuela et al, eds, in *Dismantle: An Anthology of Writing from the VONA/Voices Writing Workshop* (Philadelphia: Thread Makes Blanket Press, 2014) at 40.

Here we found no law, no justice, no mercy- Day and night
we were persecuted by these devils.

- I believe law will continue to be oppressive
- I wish legal education were able to reflect about the oppressiveness of law

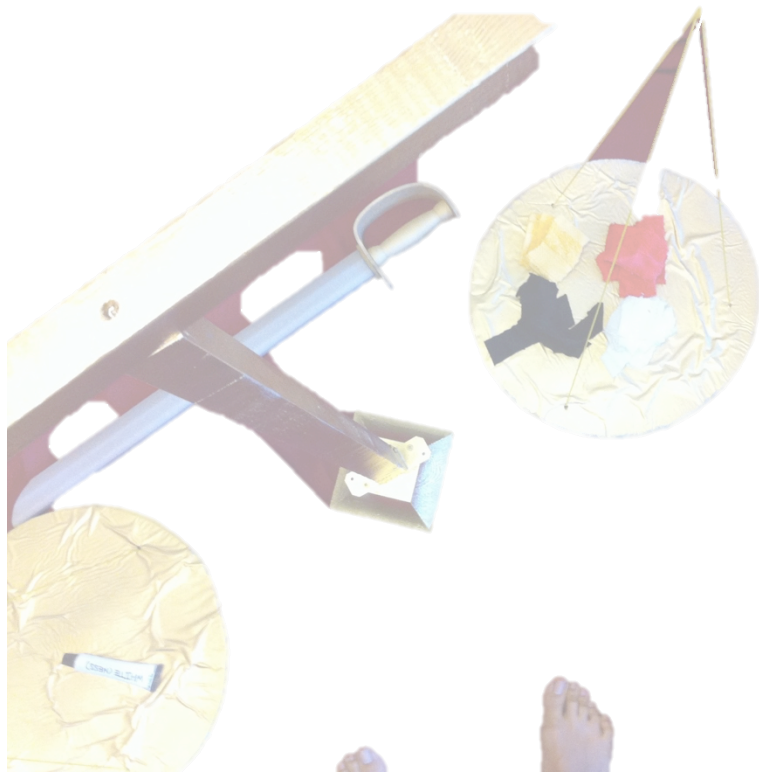
Figure 77: Letter from Komagata Maru passengers published in *The Ghaddar* (1914), City of Vancouver Archives. Photo by Preeti.

Figure 78: Anonymous Q-card response re: what one wishes law and legal education were. Photo by Preeti.

4. Re-embodiment Jurisprudence: Applying Jurisprudential Theatre

Laws live in our bodies. Not understanding how or why is dangerous. Disembodiment is dangerous.

Abstract: This chapter contains access to the first draft of a play titled *Eustitia*. The play investigates whiteness in the Canadian legal imagination, visibilizes legal erasure in relation to me and the *Komagata Maru*, and complicates the relationship between law and justice. Employing the four components of jurisprudential theatre, the scenes experiment with social, legal and personal dreaming, playing with the utopian through narrative and aesthetic, while allowing me to love the very being that I spend all my time deconstructing: law. Ultimately, this play is an attempt to transform a painful and embodied gap between me and law, justice and law, love and law through a text that will eventually be performed outside of my body for witness. By exploring political values and ethical choices at the intersections of diverse and multiple cultural, personal and legal histories, the play visibilizes and dialogues with national interests without setting them as principal determinants of knowledge and experience.³⁷¹ But jurisprudential theatre is meant to be performed and this draft has not yet had the opportunity to be read aloud, workshopped or rehearsed, let alone staged. What to do in an LLM?



Eustitia: May I speak now?

Preeti: Please. I'm out of words.

Eustitia:

The ephemeral frightens the People
They document and archive everything.
Archives signify authority.
Archives signify legitimacy.
Archives signify stability.
Archives give them false notions of certainty.

We are forgetting that stories change
each time they are told
between bodies
this is where learning happens
this is where change happens.

Preeti: Out of words or exhausted by them. I need to go for a walk. But before I go, I take it you remember Eustitia? I introduced you to her in Chapter 2. We took turns telling you her life story. I also showed you my performance art piece where I embodied her in an attempt to *re-embod*y law, jurisprudence, justice – myself. That's when she began coming to life. I'm going to leave you with her now. I'll be back soon though, don't worry.

Eustitia:

Before performing *Re-embodiment*, Preeti came to me
asking for justice
but I hold only law
Justice does not live
within my body
but in the Heart that was taken from me.

When Preeti came to me
The night air was humid
Beads of sweat bubbled under my arms,
dipping into my hip
before dripping to cold marble floor.
The air was musty,
sullied by internal controls and air systems.
I filled my lungs and raised my head,
searching for embodied knowledge
but found only what the archive makes me.

You see, sweet Reader,
there is no automatic unity between law and justice.
I am the image of justice but an embodiment of law.

Realizing I could not give her justice
Preeti performed me
asked the People how to *embody* justice.
tried to relearn law
reminding the People to dream
and remember love has a place in law.

Re-embodiment took her from written word
back to the People
closer to writing *Eustitia*.



Like the lawyer in the play you will soon read,
Preeti grew up believing law
would lead her to justice
but when she arrived at its doorstep,
she discovered
law was not her path to justice.

In jurisprudential theatre,
I see Preeti reaching for justice
rehearsing for justice
returning to justice
in an attempt to heal
But this task cannot be completed solely in writing.

Eustitia:

Preeti has *written*
a series of short scenes
about a love affair
between me and a lawyer,
the *Komagata Maru* in the background,
the lawyer trying to return my Heart to my body

Like my Heart,
the play Preeti is writing must live
and breathe
outside the body
of this thesis.

I cannot let her place the play in these pages
static
left behind
confined
her pursuit of justice would end
as my life would if my Heart were ever returned to me

You see sweet Reader,
returning my Heart to my body won't restore
Justice is not found in one person
but in love and community,
connection, story and empathy.

Only with others, in rehearsal and playspace
will Preeti experience the answers she seeks ---

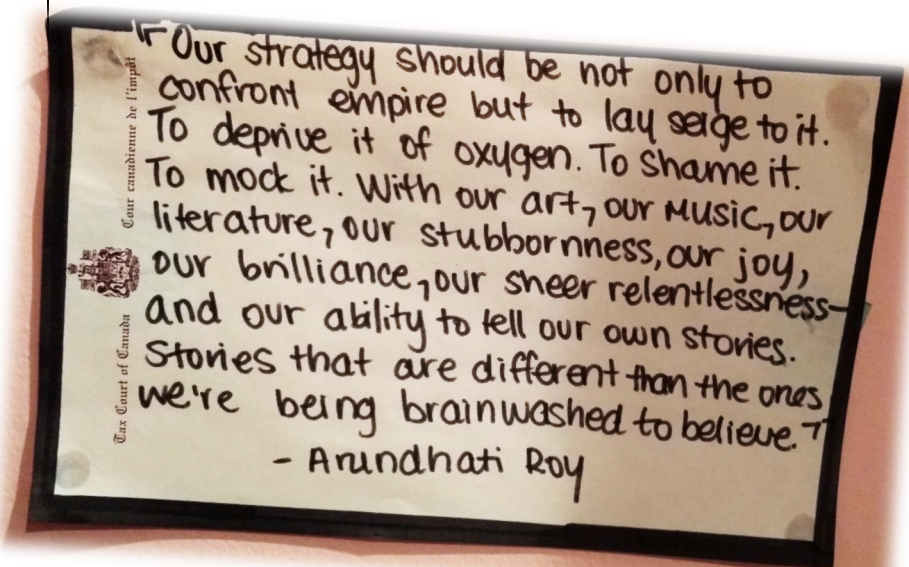
Preeti: Hey, I'm back! That walk felt so good – I needed fresh air and to move all these words and stories on law and trauma and race and whiteness through my body. Okay, let's start reading the play, shall we?

Eustitia

Experimental scenes on love and justice –
well, a queer love affair between law and justice.

By: Preeti Dhaliwal

A series of short scenes,³⁷²
yearning to be read aloud,
embodied,
workshopped and performed.³⁷³



Preeti: Hey, Eustitia, what happened to the play?

Eustitia: Click here

www.preetidhaliwal.wordpress.com

(password: jurisprudence)

³⁷¹ See Homi Bhabha, “Epilogue: Global Pathways,” Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014) at 260, 267.

³⁷² Short scenes can prevent audience from identifying with actors and instead identify with the issues presented in scene or that they glean as being presented in the scene, thus preventing them from getting attached: see Joe Norris, *Playbuilding as Qualitative Research* (Walnut Creek: Left Coast Press, 2009) at 29. Short scenes also offer audience members comfort, knowing that if a scene makes them uncomfortable, it will soon change: Damien Atkins, Andrew Kushnir & Paul Dunn, “Vocal Masque Workshop” (Workshop delivered through Belfry Theatre at St. Barnabas Anglican Church, Victoria, BC, 26 March 2016). The short scenes thus allow people to feel without diving in so deep that they are unable to think at the same time: see “metaxis” in *The Rainbow of Desire: The Boal Method of Theatre and Therapy*, translated by Adrian Jackson (New York: Routledge: 1995) at 42-45. Finally, short scenes prevent boredom: in a society of Twitter, Instagram, Facebook and a time of instant gratification, short scenes perhaps maintain attention that would otherwise be lost or allow people to refocus even if they do get bored, distracted or dive in too deep.

³⁷³ Performed for who? An audience. Anyone who wants to watch, but especially lawyers and law students, and people with an interest in legal erasure, historical wrongs and government apologies. Oh, and folks with an interest or experience in immigration/refugee law, the *Komagata Maru*, the *MV Sun Sea*. And anyone who feels an absence of love or art in law.

[REDACTED]

[REDACTED] in August 2010. The MV *Sun Sea*, which carried approximately 494 Sri Lankan ethnic Tamils, was widely reported to be owned and operated by the Tamil Tigers, [REDACTED] its arrival in Canada received significant domestic and international media attention. [REDACTED]

21

Witnessing



“Few emigrant bands in history have come so far to be sent back. They are rejected not because they are outland people, but because they come from a strange part of the world where men’s skins are not only pigmented, but their hearts also. It is not brown skins but brown minds that make them unwelcome.”

Vancouver Sun, 11 July 1914 ²²

Witnessing

²¹ *B489 v Canada (Citizenship and Immigration)*, 2015 FC 1067 at para 4 [B489].

²² Cited in Nandi Bhatia, "Revisiting the Theatre of the Komagata Maru Incident" (2015) 40:1 *Studies in Canadian Literature* at 27.

To **give witness** is to **create a common body** of remembrance...one that can and must necessarily offer us some kind of catharsis. This is what art strives to do. To **build this body out of shared fears, and triumphs, and desires, nostalgia...**for something that maybe never existed...

- Chris Abani, "Painting a Body of Loss and Love in the Proximity of an Aesthetic"²³
[emphasis added]



Witnessing

²³ In Marissa Johnson-Valenzuela et al, eds, in *Dismantle: An Anthology of Writing from the VONA/Voices Writing Workshop* (Philadelphia: Thread Makes Blanket Press, 2014) at 40.

past persecution in an (Detention period), the board also rejected the claim. A *sur place* refugee is defined in the United Nations *Handbook on Procedures and Criteria for Determining Refugee Status* (the UNHCR Handbook) as a person “who was not a refugee when he left his country, but who becomes a refugee at a later date.” The UNHCR Handbook describes two situations in which a *sur place* claim may arise: (1) a change in circumstances in the country of origin during the person’s absence, or (2) as a result of a person’s own actions such as associating with refugees already recognized or expressing political views in the new country of residence.

24

What is a failed refugee claimant?

She is a 64-year-old woman
with three grandchildren and kidney failure
She needs dialysis 1-2 times per week
to stay alive
She is arrested at the hospital
after a nurse reports her:
undocumented.
She is incarcerated
without criminal charges
She is detained
without a release date
at an Immigration Prevention Centre
(not a Detention Centre).²⁵

Witnessing

²⁴ [B489], *supra* note 21 at para 6.

²⁵ Taken poem from Harsha Walia, “Sanctuary City: Dismantling the State?” (The City Talks: The Refugee Crisis and the Sanctuary City, delivered at Legacy Art Gallery, 21 January 2016) [unpublished].

**5. This is jurisprudence: we are the ones
we've been waiting for**

<u>5. THIS IS JURISPRUDENCE: WE ARE THE ONES WE'VE BEEN WAITING FOR</u>	145
This story is jurisprudence	146
I know what law does to the body.	146
So I wrote the first draft of a play	151
Yes, a play is a jurisprudential text.	151
Because jurisprudence is	155
written,	155
embodied,	155
performed,	155
lived	155

This story is jurisprudence²⁶

Jurisprudence
as a word or concept
has been
taken away
from the people.

As a lawyer
trained at an elite
conservative law school,
and then an elite
boutique litigation firm,
(both of which advertise themselves as progressive)
and then an elite
federal judicial institution
I understand what jurisprudence is,
what law does.

As a lawyer
who acted in plays and musicals
from the ages of 10-17
then facilitated theatre of the oppressed workshops
then took physical theatre classes
then minored in theatre during her law degree
in a brown woman's skin

²⁶ The structure of this piece is based on a poem by Johnny Saldaña, "This is Not a Performance Text" (2006) 12:6 *Qualitative Inquiry* 1091. Parts of it are also influenced by Orit Kamir's Introduction in *Framed: Women in Law and Film* (Durham: Duke University Press, 2006).

I know what law does to the body.

You see,

I have read
Hart
and Fuller
and Austin
and Raz
and Dworkin
and Holmes
and Foucault
and Weber
amongst other white male philosophers

and Lord Denning
and Chief Justice McLachlin
and Chief Justice Lamer
and Chief Justice Dickson
and Justice Beetz
and Justice L'Heureux-Dubé
and Justice Wilson
and Justice LaForest
and Justice Sopinka
(and even Justice Scalia)
amongst many other white judges

and took from all of them
and their theorizing
thoughts, questions and criticisms
that arose in me,
while also acknowledging those which bored,
excluded and hurt me.

A case comment?"

I frown, sigh and think, "boring"

A "fact pattern?"

I frown, sigh and think, "again?"

A "close reading of the legislation"

I just sigh because I'm tired

These are not the only legal texts!

I read and hear that
law is legislated
jurisprudence is written
constitutions are democratic
that law is made by the people

So...

At bedtime,
when my father
tucked me in and
told me tales of chirri and kaan (crow and sparrow)
this (story) is jurisprudence.

At the temple,
when everyone
cleans everyone's shoes
eats on the same floor
serves one another food
this (way of being) is law.

On the road,
when my cousin pulls his hood over his turban
while driving an expensive car
and the cops pull him over
This (act) is law.

On the stage,
when actors
embody Ajmer Rode's story
about the *Komagata Maru*
This (performance) is law

On the internet,
when an image of a child
drowning
causes governments to open borders
This (image) is law.

On the page
when Sharon Pollock
writes a story
about William Hopkinson, race and the *Komagata Maru*
This (play) is law.

In the news,
when an image of a boat
is paired with the word terrorist
and the Canadian government subsequently detains
the boat's passengers
without reasonable cause
and without evidence
This (lie) is law.

How dare they reserve law for those in law school

How dare they confine law to cases, legislation and
codes

How dare they call something law when it has been
taken away from the people

It angers me -
how texts rule through:
constitutions
judicial decisions
legislation
contracts

how these texts
can preserve:
power dynamics
social structures
inequality
oppression
and legal monopolies

Films, media, pop culture, plays and performances
are legal offerings
documented in new forms
telling us who can and can't do what
what is and isn't acceptable
what rules we should obey
what unstated rules are already in place.

Love, solidarity and civil disobedience,
performative interventions
and desires for collective self-determination
now rival law – if not the state itself.

When movements like

“Idle no More”
and
“Occupy Wall Street”
and
“The Leap Manifesto”
and
#NODAPL

entered our everyday media and conversations
I smiled and thought to myself,

“Good.
People are finally catching on –
We are not powerless
We are powerful”

And remembered

“We are the ones
We are the ones we’ve been waiting for.”²⁷

²⁷ June Jordan, “Poem for South African Women” in (1990) *Passion*,
online: <<http://www.junejordan.net/poem-for-south-african-women.html>>;
Hopi Elders, “We are the Ones We've Been Waiting For” (23 August 2010)
Awakin.org, online: <<http://www.awakin.org/read/view.php?tid=702>>.

Opium for the masses

Unlimited rule hidden by power
In service of an elite
Hegemonic class.

This is not the only law!
This cannot be the only law.²⁸

²⁸ See Kamir, *supra* note 26 at 3.

So I wrote the first draft of a play
Wait
Not *just* a play. This play will be
 a jurisprudential text
 a subversion
 a legal document.

And I performed a piece of art
Wait
Not *just* performance art
This performance is
 A living legal archive
 Law embodied
 Jurisprudence performed.

Yes, a play is a jurisprudential text.
And a performance is law (re)embodied.

One lives permanently in written form
Not just a play.
It is a jurisprudential text.

The other is transmitted
through memory, movement, story, witnessing
Not just a performance
It is an embodiment of law.

Both, whether read or performed,
engage you in judgment.

You are not simply reading words
or hearing an actor speak aloud
or watching a body repeat an action

You are judging
words that provoke
words that subvert
or words that make you aware
of previous and unknown assumptions

You are judging
a body that provokes
a gesture that subverts
or a stillness that makes you aware
of previous and unknown assumptions

This project is therefore not just a play or
performance
but also a legal text and legal embodiment
living
in bodies, in stories, in text and online.

Lawyers and law-makers do not get to determine
what laws and rules emerge
from pop culture, performance and art.
Nor do they solely determine
what laws and rules emerge
from state law, case law or unwritten convention.

These determinations are a right
and the work of

the storyteller
the playwright
the director
the poet

the musician
the producer
the painter
the artist

and of course,
the people
the public
an audience.

You see, I have also read

Patricia Williams
and Mari Matsuda
and Richard Delgado
and Frantz Fanon
and W.E.B. Du Bois
and Linda Tuhiwai Smith
and Sherene Razack
and Kimberlé Crenshaw
and Chandra Talpade Mohanty
and Angela Davis
and David Dante Troutt
and Joshua Takano-Chambers Letson
and Devon W. Carbado
and Mitu Galati
amongst other critical race, feminist and performance
theorists (who you can find in my bibliography)

and Toni Morrison
and Ta-Nehisi Coates
and Junot Diaz
and Tracey Lindberg
and Sherman Alexie
and Eduardo Galeano
and other writers who tell stories about power and race

and Justice Juanita Westmoreland-Traoré
and Justice Corinne Sparks
amongst the few courageous, race-conscious judges

and learned from them,
and their theorizing
to ask questions, speak up and challenge the status quo
because my ways of being and seeing are valid
and powerful too.

Ask how

language
personal and collective identity
memory
history
law
and social roles
are created.

Create meaning
Imagine the possible
Intervene with performance
Construct your own humanity,
social groups
and identity
Transform, shift and change
the world,
how you think,
your relationships
This is law.

Invite participants,
vulnerable
marginalized
searching for meaning
looking for hope
to share
their visions
their logic
their rhetoric
their values
their ways of being
This is basis for a jurisprudential text.

Go ahead,
use
law
legal text
jurisprudence
jurisprudential
legality
as if the words
belonged only to you
sprinkled sparingly
amongst the elites
in the legal classroom
in the courtroom
around the firm on Bay Street
so exclusive
yet ubiquitous
omniscient and reaching
the status of each of us
 all of us
 every one of us.

But know that I
 and many others
will be protesting
 contesting
 listening
 scowling
 subverting
 interrupting
 objecting
 thinking
 creating

Because we know these are not the only legal texts.

Those with too much money in their pockets have
misdirected the love in their hearts
and their time (ticking on their dockets)
in want of something

 particular
 predictable
 certain
 definitive
 one-size fits all
 powerful.

They argue about what law is and is not –
for them
and for others.

Yeah, right...

But when Martin Luther King says

 “Power at its best is love implementing the
 demands of Justice. Justice at its best is Power
 correcting everything that stands in the way of
 love.”

This I understand
(indeed, some are more love-abiding than others).

As for me,
I will take back the power
I was taught to hold
 special
 sacred
 infinite
reserved
for all: story
through text but also performance.

In search of law that is
 just
 loving
 personal
 contextual
 embodied.

So this project examines plays & performance as law
 legislating
 recording reiterating
 reiterating recording
 creating an archive without
 court headers
 signatures
 rubber stamps of authentication

 analysing
 documenting
 and revealing
 how bodies create
 records of resilience
 spaces of possibility.

Performance is a way
the state comes into being,
 inscribing labels
 immigrant!
 citizen!
 non-citizen!
 refugee!
 illegal!
 in and on bodies

Performance is also a way
the people can rehearse
 for social change
 relate to the past
 engage lived experience
 bridge present and imagined future
 represent invisible legal frameworks
Place adjudication in the hands of the people

Because jurisprudence is
written,
embodied,
performed,
lived

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LIVE SOURCES: Plays, Performances, Lectures (Witnessed)

Atkins, Damien & Andrew Kushnir & Paul Dunn, *The Gay Heritage Project* (Live play performed at the Belfry Theatre, 25 March 2016)

-----“Vocal Masque Workshop” (26 March 2016) Live workshop at Barnabas Anglican Church, Victoria, BC.

Dosanjh, Ujjal. “Why Apologizing for Historical Wrongs is Not the Answer”, Law Society of Upper Canada, Toronto, ON (14 March 2014) [unpublished].

Farber, Yael. *Nirbhaya* (Play performed at The Cultch, 8 November 2015)

Tracey Lindberg, “Guest lecture on *Birdie*,” Indigenous Legal Theory Seminar (February 2016), University of Victoria, Victoria, BC, Lecture [unpublished].

Prentki, Tim. “On the Nature of Dramatic Process: Rehearsing for Revolutions?” 20th Annual Summer Drama Education/Applied Theatre Institute (9 May 2016). University of Victoria, Victoria, Lecture [unpublished].

Vancouver City Archives. *Komagata Maru Files*. Vancouver, BC.

Walia, Harsha. “Sanctuary City: Dismantling the State?” (The City Talks: The Refugee Crisis and the Sanctuary City, delivered at Legacy Art Gallery, 21 January 2016) [unpublished, unrecorded].

LEGISLATION (text)

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c 11.

Convention Relating to the Status of Refugees (28 July 1951) 189 UNTS 137, [1954] ATS 5.

Immigration and Refugee Protection Act, SC 2001, c 27.

Constitution Act 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985 App II, No 5.

CASE LAW (text)

B135 v Canada (Citizenship and Immigration), 2013 FC 871.
B489 v Canada (Citizenship and Immigration), 2015 FC 1067.
Canada (Citizenship and Immigration) v A25, 2014 FC 4.
Canada (Citizenship and Immigration) v A032, 2013 FC 322.
Canada (Citizenship and Immigration) v A049, 2014 FC 344.
Canada (Citizenship and Immigration) v B272, 2013 FC 870.
Canada (Citizenship and Immigration) v B344, 2013 FC 447.
Canada (Citizenship and Immigration) v B380, 2012 FC 1334.
Canada (Citizenship and Immigration) v B399, 2013 FC 260.
Canada (Citizenship and Immigration) v B451, 2013 FC 441.
Delgamuukw v British Columbia, [1997] 3 SCR 1010, 153 DLR (4th) 193.
Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190.
Munshi Singh, Re, [1914] 20 BCR 243 (BCCA), 1914 CarswellBC 255.
NR v Canada (Citizenship and Immigration), 2015 FC 425.
Quong Wing v Rex [1914] 49 SCR 440, 6 WWR 270.

Singh v Canada (Minister of Employment and Immigration), [1985] 1 SCR 177.
Thanabalasingam v Canada (Citizenship and Immigration), 2015 FC 397.
X (Re), 2013 CanLII 101028 (CA IRB).

SECONDARY MATERIALS: Monographs (text)

- Agamben, Giorgio. *State of Exception* (Chicago: University of Chicago Press, 2005).
- Ahmed, Sara. *Strange Encounters: Embodied Others in Post-Coloniality* (London: Routledge, 2000).
- Ajmer Rode & Jarnail Singh, *Journey with the Endless Eye: Stories of the Komagata Maru Incident* (Vancouver: Ekstasis Editions, 2014).
- Aylward, Carol A. *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood Publishing, 1999).
- Baldwin, James. *Nobody Knows my Name: More Notes of a Native Son* (New York: Dial Press, 1961).
- Bammer, Angelika. *Partial Visions: Feminism and Utopia in the 1970s* (New York: Routledge, 1991).
- Banks, Anna & Stephen Banks. *Fiction and Social Research: By Ice or Fire* (Walnut Creek: AltaMira Press, 1998).
- Beckerman, Bernard. *Theatrical Presentation: Performer, Audience and Act*, Gloria Brim Beckerman & William Vincent Coco, eds (London: Routledge, 1990).
- Bennett, Jill. *Empathic Vision: Affect, Trauma, and Contemporary Art* (Stanford: Stanford University Press, 2005).
- Boal, Augusto. *Games for Actors and Non-Actors*, translated by Adrian Jackson (London: Routledge, 2002).
-----*Legislative Theater*, translated by Adrian Jackson (London: Routledge, 1998).
-----*Rainbow of Desires*, translated by Adrian Jackson (London: Routledge, 1995).
-----*Theatre of the Oppressed*, translated by Charles A. McBride & Maria-Odilia Leal (New York: Theatre Communications Group, 1985).
- Brecht, Bertolt. *Brecht on Theatre*, translated by John Willett, ed (New York: Hill and Wang, 1964).
- Butler, Judith. *Bodies that Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993).
-----*Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999).
-----*Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004).
- Carbado, Devon W. & Mitu Galati, *Acting White? Rethinking Race in "Post-Racial America"* (Oxford: Oxford University Press, 2013).
- Carpenter, Faedra Chatard. *Coloring Whiteness: Acts of Critique in Black Performance* (Ann Arbor: University of Michigan Press, 2014).
- Chambers-Letson, Joshua Takano. *A Race So Different: The Making of Asian Americans in Law and Performance* (New York: NYU Press, 2013).

- Coates, Ta-Nehisi. *Between the World and Me* (New York: Spiegel & Grau, 2015).
- Davis, Angela Y. *Freedom is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement* (Chicago: Haymarket Books, 2016).
- Deleuze, Gilles & Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* [1980], translated by Brian Massumi (London: University of Minnesota Press, 1987).
- Derrida, Jacques. "Signature Event Context" in *Limited Inc.* (Evanston: Northwestern UP, 1988) 1.
 -----*Speech and Other Phenomena* (Evanston, IL: Northwestern University Press, 1973).
 -----*Of Grammatology* (Baltimore, MD: Johns Hopkins University Press, 1977).
 -----*The Force of Law: The Mythical Foundations of Authority* (Paris: Galilee, 1991).
 -----*Writing and Difference* (Chicago, IL: University of Chicago Press, 1978).
- Descartes, Rene. *Ouevres de Descartes*, 11 vols, Charles Adam and Paul Tannery, eds (Paris: Vrin, 1974-1989).
 -----*The Philosophical Writings of Descartes*, 3 vols, translated by John Cottingham et al (Cambridge: Cambridge University Press, 1984-1991).
- David Diamond, *Theatre For Living: The Art and Science of Community-Based Dialogue* (Victoria: Trafford Publishing, 2007).
- Dolan, Jill. *Utopia in Performance: Finding Hope at the Theater* (Ann Arbor: University of Michigan Press, 2005).
- Fanon, Frantz. *Black Skin, White Masks*, translated by Richard Philcox (New York: Grove Press, 1952) reprint 2008.
 -----*The Wretched of the Earth* (Harmondsworth: Penguin Books, 1963).
- Felman, Shoshana. *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge: Harvard University Press, 2002).
- Foucault, Michel. *Language, Counter-Memory, Practice*, edited by Donald F Bouchard (Ithaca: Cornell University Press, 1977).
- Gearey, Adam. *Law and Aesthetics* (Oxford: Hart Publishing, 2001).
- Harvey, David. *Spaces of Hope*. (Los Angeles: California University Press, 2000).
- Hasebe-Ludt, Erika & Cynthia M. Chambers & Carl Leggo, *Life Writing and Literary Métissage as an Ethos for Our Times* (New York: Peter Lang, 2009).
- Jacoby, Russell. *Picture Imperfect: Utopian Thought for an Anti-Utopian Age* (New York: Columbia University Press, 2005).
- Jameson, Fredric. *Archaeologies of the Future: The Desire Called Utopia and Other Science Fictions* (London: Verso, 2005).

- Johnston, Hugh. *The Voyage of the Komagata Maru: The Sikh Challenge to Canada's Colour Bar* (Vancouver: UBC Press, 2014) at xiii
- Kamir, Orit. *Framed: Women in Law and Film* (Durham: Duke University Press, 2006).
- Kazimi, Ali. *Undesirables: White Canada and the Komagata Maru, an Illustrated History* (Vancouver: Douglas & McIntyre, 2012).
- Lederach, John Paul. *The Moral Imagination: The Art and Soul of Building Peace* (Oxford: Oxford University Press, 2005).
- Levine, Peter A. *In an Unspoken Voice: How the Body Releases Trauma and Restores Goodness* (Berkeley, CA: North Atlantic Books, 2010).
- *Waking the Tiger: Healing Trauma: The Innate Capacity to Transform Overwhelming Experiences* (Berkeley, CA: North Atlantic Books, 1997).
- Levitas, Ruth. *The Concept of Utopia* (Syracuse: Syracuse University Press, 1990).
- Madison, Soyini D. *Acts of Activism: Human Rights as Radical Performance* (Cambridge: Cambridge University Press, 2010).
- Massumi, Brian. *A User's Guide to Capitalism and Schizophrenia: Deviations from Deleuze and Guattari* (Boston: MIT Press, 1992).
- *Parables for the Virtual: Movement, Affect, Sensation*, (Durham: Duke University Press Books, 2002).
- Minh ha, Trinh T. *Woman Native Other: Writing Postcoloniality and Feminism* (Indianapolis: Indiana University Press, 1989).
- "Other than myself/my other self." In George Robertson, Melinda Mash, Lisa Lickner et al, eds, *Traveller's tales: Narratives of home and displacement* (New York, Routledge, 1994).
- Mohanty, Chandra Talpade. *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (Durham: Duke University Press, 2003).
- Moore, Christopher. *The British Columbia Court of Appeal: the first hundred years, 1910-2010* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History, 2010).
- Morrison, Toni. *Playing in the Dark: Whiteness and the Literary Imagination* (Cambridge: Harvard University Press, 1992).
- Moylan, Tom. *Demand the Impossible: Science Fiction and the Utopian Imagination* (New York: Methuen, 1986).
- Nathanson, Donald L. *Shame and Pride: Affect, Sex, and the Birth of the Self* (New York: Norton, 1992).
- Neelands, Jonathan & Tony Goode. *Structuring Drama Work: A Handbook of Available Forms in Theatre and Drama* (Cambridge: Cambridge University Press, 2000).
- Nietzsche, Friedrich. *Beyond Good and Evil*. (New York: Vintage Books Edition, 1989).

- Norris, Joe. *Playbuilding as Qualitative Research* (Walnut Creek: Left Coast Press, 2009).
- O'Connor, Peter. *Applied Theatre: Research: Radical Departures* (London: Bloomsbury Methuen Drama, 2015).
- Okri, Ben. *A Way of Being Free* (London: Phoenix House, 1997).
- Parmar, Pooja. *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings* (New York: Cambridge University Press, 2015).
- Prendergast, Monica & Juliana Saxton, eds, *Applied theatre: International Case Studies and Challenges for Practice* (Bristol: Intellect Books, 2009).
- Pardo, Michael S. & Dennis Patterson, *Minds, Brains, and Law: The Conceptual Foundations of Law and Neuroscience* (Oxford: Oxford University Press, 2013).
- Ramachandran, Vilayanur S. *The Tell-Tale Brain: A Neuroscientist's Quest for What Makes us Human* (New York: WW Norton, 2011).
- Ramirez, Renya. *Native Hubs: Culture, Community and Belonging in Silicon Valley and Beyond* (Durham: Duke University Press, 2007).
- Ramnath, Maia. *Haj to Utopia: How the Ghadr Movement Charted Global Radicalism and Attempted to Overthrow the British Empire* (Berkeley: University of California Press, 2011).
- Rancière, Jacques. *The Politics of Aesthetics*, trans Gabriel Rockhill (New York: Bloomsbury Academic, 2006).
- Rankine, Claudia. *Citizen: An American Lyric* (Minneapolis: Graywolf Press, 2014).
- Don't let me be lonely: an American Lyric (Minneapolis: Graywolf Press, 2004).
- Razack, Sherene. *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998).
- Race, space, and the law: Unmapping a white settler society*. (Toronto: Between the Lines, 2002).
- Ross, Thomas. *Just Stories: How the Law Embodies Racism and Bias* (Boston: Beacon Press, 1996).
- Said, Edward W. *Culture and Imperialism* (New York: Knopf, 1993).
- Saldaña, Johnny. *Ethnotheatre: Research from Page to the Stage* (Walnut Creek: Left Coast Press, 2011).
- Schechner, Richard. *Performance Theory* (New York: Routledge, 1988).
- Sheppard, Colleen. *Inclusive Equality: Relational Dimensions of Systemic Discrimination in Canada* (Montreal: McGill-Queen's University Press, 2010).
- Simpson, Leanne. *Dancing on our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence, and a New Emergence*, anonymous translator (Winnipeg: Arbeiter Ring Pub, 2011).

Smith, Anna Deavere. *Fires in the Mirror: Crown Heights, Brooklyn, and Other Identities*. New York: Dramatists Play Service, 1997. Print.

Smith, Linda Tuhiwai. *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999).

Smith, Sidonie. *Interfaces: Women, Autobiography, Image, Performance*, Sidonie Smith & Julia Watson, eds (Ann Arbor: University of Michigan Press, 2002).

Sontag, Susan. *Regarding the Pain of Others* (New York: Picador, 2003).

Spinoza, Benedictus de. *Ethics, Part III* [1677], translated by WH White & AH Stirling (London: Wordsworth Editions, 2001) at 141-146.

Szanto, George H. *Theater & Propaganda* (Austin: University of Texas Press, 1978).

Taylor, Diana. *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham: Duke University Press, 2003).

Thompson, James. *Humanitarian Performance: From Disaster Tragedies To Spectacles Of War* (Chicago: Seagull Books, 2014).

Troutt, David Dante. *The Monkey Suit And Other Short Fiction on African Americans and Justice* (New York: The New Press, 1998).

Walia, Harsha. *Undoing Border Imperialism* (Vancouver: AK Press, 2013).

Ward, Peter. *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia*, 2nd ed (Montreal: McGill-Queen's University Press, 1990).

Weiss, Gail. *Body Images: Embodiment as Intercorporeality*. (London: Routledge, 1999).

White, James Boyd. *From Expectation to Experience* (Ann Arbor: University of Michigan Press, 1999).

Williams, Patricia J. *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge: Harvard University Press, 1991).

Young, Alison. *Judging The Image: Art, Value, Law* (New York: Routledge, 2005).

-----*Street Art, Public City. Law, Crime and the Urban Imagination* (New York: Routledge, 2014).

SECONDARY MATERIALS: Journals & Chapters (text)

Abani, Chris. "Painting a Body of Loss and Love in the Proximity of an Aesthetic" in Marissa Johnson-Valenzuela et al, eds, in *Dismantle: An Anthology of Writing from the VONA/Voices Writing Workshop* (Philadelphia: Thread Makes Blanket Press, 2014).

- Elizabeth Adjin-Tettey, Gillian Calder, Angela Cameron, Maneesha Deckha, Rebecca Johnson, Hester Lessard, Maureen Maloney & Margot Young. "Postcards from the Edge (of Empire)" (2008) 17 *Social and Legal Studies* 5.
- Arrigo, Bruce A. "De/reconstructing Critical Psychological Jurisprudence: Strategies of Resistance and Struggles for Justice" (2010) 6:4 *International Journal of Law in Context* 363.
- "Rethinking the Language of Law, Justice, and Community: Postmodern Feminist Jurisprudence" in David Caudill and Steven Gold, eds, *Radical Philosophy of Law: Contemporary Challenges to Mainstream Legal Theory* (Atlantic Heights, NJ: Humanities Press, 1997) 88.
- Austin, John L. "Performative Utterances," in *Philosophical Papers* (Oxford: Clarendon Press, 1961) 220.
- Bandes, Susan A. *The Passions of Law* (New York University Press, New York, 1999).
- Barthes, Roland. "A Lover's Discourse" in Susan Sontag, ed, *A Barthes Reader* (New York: Macmillan, 1983).
- Beck, Jaime et al. "Delineating a spectrum of research-based theatre" (2011) 17:8 *Qualitative Inquiry* (SagePub) 688.
- Belliveau, George. "Investigating British Columbia's Past: *The Komagata Maru Incident* and *The Hope Slide* as Historiographic Melodrama" (2003) 137 *BC Studies* 93.
- Belliveau, George & Monica Prendergast. "Poetics and performance" in Audrey Trainor & Elizabeth Graue, eds, *Reviewing Qualitative Research In The Social Sciences* (New York: Routledge, 2013).
- Bernstein, Robin. "Toward the Integration of Theatre History and Affect Studies: Shame and the Rude Mechs's The Method Gun" (2012) 64 *Theatre Journal*: Johns Hopkins University Press.
- Berrol, Cynthia F. "The neurophysiologic basis of the mind-body connection in dance/movement therapy" (1992) 14:1 *American Journal of Dance Therapy* 19.
- Bhabha, Homi. "Epilogue: Global Pathways" in Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014).
- Bhatia, Nandi. "Revisiting the Theatre of the Komagata Maru Incident" (2015) 40:1 *Studies in Canadian Literature* 27.
- Billington, Michael. "Verbatim Theatre" in Victoria Brittain & Nicolas Kent & Richard Norton-Taylor & Gillian Slovo, eds, *The Tricycle: Collected Tribunal Plays 1994-2002* (London: Oberon Books, 2014).
- Blackett, Adelle. "Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct" (2001) 8:2 *Indiana Journal of Global Studies* 401.

- Bouclin, Suzanne & Gillian Calder & Sharon Cowan, "Playing Games with Law" in Maksymilian Del Mar & Zenon Bankowski & Paul Maharg, eds, *The Arts and the Legal Academy: Beyond Text in Legal Education* (New York: Routledge, 2013).
- Bryant, Keith Alexander. "Performance and Pedagogy" in Madison D. Soyini & Judith Hamera, eds, *The Sage Handbook of Performance Studies* (Thousand Oaks: Sage, 2006).
- Butler, Judith. "Performative Acts and Gender Constitution: an Essay in Phenomenology and Feminist Theory" in Henry Bial, ed, *Performance Studies Reader* (Routledge: London, 2004).
- Butler, Octavia E. "Brave New Worlds: A Few Rules for Predicting the Future" (2000) 31 *Essence Communications* 165.
- Calder, Gillian. "Guantanamo: Using a Play-reading to Teach Law" (2010) 142 *Canadian Theatre Review* 44.
- "Performance, Pedagogy and Law: Theatre of the Oppressed in the Legal Classroom" in Maksymilian Del Mar & Zenon Bankowski, eds, *The Moral Imagination and the Legal Life: Beyond Text in Legal Education* (Surrey, England: Ashgate Publishing, 2013)
- Cohen-Cruz, Jan. "General Introduction" in Jan Cohen-Cruz, ed, *Radical Street Performance: An International Anthology* (London: Routledge, 2013).
- Conquergood, Dwight. "Rethinking Ethnography: Towards a Critical Cultural Politics" in Madison D. Soyini & Judith Hamera, eds, *The Sage Handbook of Performance Studies* (Thousand Oaks: Sage, 2006).
- Couton, Philippe & José Julián López. "Movement as Utopia" (2009) 22:4 *History of the Human Sciences* 93.
- Cover, Robert. "The Supreme Court 1983 Term -- Foreword: Nomos and Narrative" (1983-84) 97 *Harvard Law Review* 4 (Heinonline).
- Crawley, Karen & Honni Van Rijswijk, "Justice in the Gutter: Representing Everyday Trauma in the Graphic Novels of Art Spiegelman" (2012) 16:1 *Law Text Culture* 93 (Heinonline).
- Crenshaw, Kimberley. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43:6 *Stanford Law Review* 1241.
- Cull, Laura & Will Daddario. "Manifesto Now! (Again!)" in Laura Cull & Will Daddario, eds, *Manifesto Now: Instructions for Performance, Philosophy, Politics* (Intellect: Bristol, 2013).
- Denzin, Norman K. "The call to performance" (2003) 26:1 *Symbolic Interaction* 187 (Jstor).
- Derrida, Jacques. "Signature Event Context" in *Limited Inc.* (Evanston: Northwestern UP, 1988).

- Dhaliwal, Preeti. "The Performativity of Evidence: Oral History Testimony and Aboriginal Land Claims" (2013) 10.2 *alt theatre* 24.
- Diamond, Elin. "Introduction" in Elin Diamond, ed, *Performance and Cultural Politics* (London: Routledge, 1996).
- Doty, Roxanne Lynn. "Autoethnography – making human connections" (2010) 36:4 *Review of International Studies*.
- Duguay, Jennie & Kara Taylor, "Can Broken be Whole" (15 November 2016), online: *Guts* (Issue 7) <<http://gutsmagazine.ca/broken/>>.
- Dunn, Kevin C. "There is No Such Thing as the State: Discourse, Effect and Performativity" (2010) 37:1 *Forum for Development Studies*, 79 (tandfonline).
- Egan, Brian. "Resolving 'the Indian Land Question'? Racial Rule and Reconciliation in British Columbia" in Andrew Baldwin, Laura Cameron & Audrey Kobayashi, eds, *Rethinking the Great White North: Race, Nature, and the Historical Geographies of Whiteness in Canada* (UBC Press: Vancouver, 2011) 211.
- Ewick, Patricia & Susan Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative," (1995) 29 *Law and Society Review* 197 (Heinonline).
- Fanon, Frantz. "Concerning Violence" in *The Wretched of the Earth*, translated by Constance Farrington (New York: Grove Press, 1963).
- Fischer-Lichte, Erika. "Introduction" in Erika Fischer-Lichte, Torsten Jos & Saskya Iris Jain, eds, *The Politics of Interweaving Performance Cultures: Beyond Postcolonialism* (New York: Routledge, 2014).
- Foster, Hamar. "Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927" in Hamar Foster & John McLaren, eds, *Essays in the History of Canadian Law: British Columbia and the Yukon*, vol vi (Toronto: University of Toronto Press, 1995).
- Foucault, Michel. "Two lectures" in Colin Gordon, ed, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, translated by Colin Gordon et al. (New York: Pantheon, 1980).
- Glesne, Corrine. "That rare feeling: Re-presenting research through poetic transcription" (1997) 3:2 *Qualitative Inquiry* 202 (Sagepub).
- Goodrich, Peter. "Legal Enigmas – Antonio de Nebrija, e Da Vinci Code and the Emendation of Law" (2010) 30 *Oxford Journal of Legal Studies* 71.
- Grace, Sherrill. "Introduction" in Sherrill Grace & Jerry Wasserman, eds, *Theatre and AutoBiography: Writing and Performing Lives in Theory and Practice* (Talonbooks: Vancouver, 2014).

- “Theatre and the AutoBiographical Pact: An Introduction” in Sherrill Grace & Jerry Wasserman, eds, *Theatre and AutoBiography: Writing and Performing Lives in Theory and Practice*. (Talonbooks: Vancouver, 2014).
- Grace, Sherrill & Gabriele Helms, “Documenting Racism: Sharon Pollock’s *The Komagata Maru Incident*” in Veronica Strong-Boag et al, eds, *Painting the Maple: Essays on Race, Gender, and the Construction of Canada* (Vancouver: UBC Press, 1998).
- Habermas, Jürgen. “Law as a Medium and Law as an Institution” in Gunther Teubner, ed, *Dilemmas of Law in the Welfare State* (New York: Walter de Gruyter, 1986) 203.
- Hibbitts, Bernard J. “Making Motions: The Embodiment of Law in Gesture” (1995) 6 *Journal of Contemporary Legal Issues*.
- hooks, bell. “Theory as Liberatory Practice” (1991) 1:4 *Yale Journal of Law and Feminism* at 1.
- Jones, Matt. “Towards a Global Empathy Imagining Otherness in the War on Terror” (2016) 12:1 *alt theatre: cultural diversity on the stage*.
- Johnson, Patrick E. “Unraveling Foucault’s “Different Spaces”” (2006) 19:4 *History of the Human Sciences*.
- Johnston, Hugh. “The *Komagata Maru* and the Ghadr Party: Past and Present Aspects of a Historic Challenge to Canada’s Exclusion of Immigrants from India” (2013) 178 *BC Studies* 9.
- Jungkunz, Vincent. “The Racialized State of Exception” (2013) SSRN, 2014 National Conference of Black Political Scientists (NCOBPS) Annual Meeting.
- Kirshen-Blatt Gimblett, Barbara. “Performance Studies” in Henry Bial, ed, *The Performance Studies Reader* (London: Routledge, 2004).
- Kleinhans, Martha-Marie & Roderick A. Macdonald. “What is a *Critical Legal Pluralism*?” (1997) 12:2 *Canadian Journal of Law and Society* 25.
- Leiboff, Marett. “Law, Muteness and the Theatrical” (2010) 14:21 *Law Text Culture* 387.
- “Towards a Jurisprudence of the Embodied mind – Sarah Lund, Forbrydelsen and the Mindful Body”, online: (2015) 2:6 Naveiñ Reet: *Nordic Journal of Law & Social Research*, Special Issue on Law and Art 77.
- Levy, Jonathan. “Theatre and Moral Education,” (1997) 31:3 *The Journal of Aesthetic Education* 65.
- Llewellyn, Karl. *A Required Course in Jurisprudence* (1940) 9 *American Law Society Review* 590.
- Maté, Gabor. “Foreword,” in Peter A Levine, *In an Unspoken Voice: How the Body Releases Trauma and Restores Goodness* (Berkeley, CA: North Atlantic Books, 2010).
- Matsuda, Mari. “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 11:7 *Women’s Rights Law Reporter* 7.

- Mawani, Renisa. "'Cleansing the Conscience of the People': Reading Head Tax Redress in Multicultural Canada" (2004) 19:2 *Canadian Journal of Law and Society/Revue canadienne droit et société* 127.
- "Specters of Indigeneity in British-Indian Migration, 1914" (2012) 46:2 *Law & Society Review* 369.
- Merry, Sally Engle. "Legal Pluralism" (1988) 22:5 *Law Society Review* 869 (JStor).
- Miller, Lynn C & Jacqueline Taylor, "Constructed Self: Strategic and Aesthetic Choices Autobiographical Performance" in Madison D. Soyini & Judith Hamera, eds, *The Sage Handbook of Performance Studies* (Thousand Oaks: Sage, 2006).
- Minh-ha, Trinh T. "Other than myself/my other self" in George Robertson et al, eds, *Traveller's tales: Narratives of home and displacement* (New York, Routledge, 1994).
- Murphy, Anne. "Performing the Komagata Maru: Theatre and the Work of Memory" (2015) 40:1 *SCL/ÉLC* at 46.
- Pelias, Ronald J. "Performative writing as scholarship: An apology, an argument, an anecdote" (2005) 5:4 *Cultural Studies <- -> Critical Methodologies* 415 (Sagepub).
- Pollock, Sharon. "Playwright: Parasite or symbiont" in *Creating autobiography on stage*, Sherrill Grace & Jerry Wasserman, eds, (Vancouver: Talonbooks, 2006);
- Prendergast, Monica. "Poetic Inquiry, 2007-2012: A Surrender and Catch Found Poem" (2015) 21:8 *Qualitative Inquiry* 678.
- Prendergast, Monica & Juliana Saxton, "Seduction of the Real: the Significance of Fiction in Applied Theatre," (2015) 20:3 *Research in Drama Education: The Journal of Applied Theatre and Performance*.
- Quigley, William P. "Letter to a Law Student Interested in Social Justice" (2007) 1:1 *DePaul Journal for Social Justice*.
- Saldaña, Johnny. "This is not a performance text" (2006) 12:6 *Qualitative Inquiry* 1091.
- Schneider, Rebecca. "Performing Remains Again" in Gabriella Giannachi, Nicke Kaye & Michael Shanks, eds, *Archaeologies of Presence: Art, Performance and the Persistence of Being* (London: Routledge, 2012) 64.
- "See the Big Show: Spiderwoman Theater Doubling Back," in Hart & Peggy Phelan, eds, *Acting Out: Feminist Performances*, (Ann Arbor: University of Michigan Press, 1993).
- Sedgwick, Eve Kosofsky. "Shame, Theatricality, and Queer Performativity: Henry James's The Art of the Novel," in Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (Durham: Duke University Press, 2003).
- Smith, Andrea. "Foreword" in *Undoing Border Imperialism* (Vancouver: AK Press, 2013).
- Smith, Sidonie. "Identity's Body" in Kathleen Ashley, Leigh Gilmore, & Gerald Peters, eds, *Autobiography and Postmodernism* (Amherst: University of Massachusetts Press, 1994).

Spivak, Gayatri. "Translation as Culture." *Parallax* 6:1 (2000) 22.

Webb, Thomas E. "Exploring Systems Boundaries" (2013) 24 *Law Critique* 131.

Wilkerson, Abby. "Embodiment" in *Keywords for Disability Studies*, Rachel Adams, Benjamin Reiss, David Serlin, eds (New York: New York University Press, 2015) 67.

SECONDARY MATERIALS: Plays (text)

Ajmer Rode, *Komagata Maru*, translated by Ajmer Rode & Surjeet Kalsey (SFU Library: Vancouver, 1985).

Baldwin, James. *Blues for Mister Charlie: A Play* (New York: Dial Press, 1964).

Black, Dustin Lance. "8" researched by Kate Sullivan Gibbens, researcher (Burbank: 2012) [unpublished].

Brittain, Victoria & Gillian Slovo. *Guantanamo: Honour Bound to Defend Freedom*, (London: Oberon Books, 2004).

McCauley, Robbie. *Sally's Rape* (1994) in Annemarie Bean, ed, *A sourcebook of African-American performance : plays, people, movements* (New York: Routledge, 1999).

Miguel, Muriel. "Hot 'n' Soft" in Jean O'Hara, ed, *Two Spirit Acts: Queer Indigenous Performances* (Toronto: Playwrights Canada Press, 2013).

Monkman, Kent. "Taxonomy of the European Male," in Jean O'Hara, ed, *Two Spirit Acts: Queer Indigenous Performances* (Toronto: Playwrights Canada Press, 2013).

Norton-Taylor, Richard. "The Colour of Justice" in Victoria Brittain & Nicolas Kent & Richard Norton-Taylor & Gillian Slovo, eds, *The Tricycle: Collected Tribunal Plays 1994-2002* (London: Oberon Books, 2014).

Pollock, Sharon. *The Komagata Maru Incident* (Toronto: Playwrights Press, 1978).

Tannahill, Jordan. *Age of Minority: 3 Solo Plays* (Toronto: Playwrights Canada Press, 2013).

SECONDARY SOURCES: Articles & handouts (text & video)

Abani, Chris. "The Face: Cartography of the Void" *WarScapes* (29 February 2016), online interview: Warscapes <<http://www.warscapes.com/literature/face-cartography-void>>.

âpihtawikosisân, "Beyond territorial acknowledgments" (23 September 2016) online: Law, language, life: A Plains Cree speaking Métis woman in Montreal <<http://apihtawikosisan.com/2016/09/beyond-territorial-acknowledgments/>>.

Associated Press Toronto. "Canada meets target to resettle 25,000 Syrian refugees" (1 March 2016), online: *The Guardian* <<https://www.theguardian.com/world/2016/mar/01/canada-target-resettle-25000-syrian-refugees>>.

Boutilier, Alex. "CSIS highlights white supremacist threat ahead of radical Islam" (15 March 2015) *Toronto Star*, online: Toronto Star <<https://www.thestar.com/news/canada/2015/03/15/csis-highlights-white-supremacist-threat-ahead-of-radical-islam.html>>.

Barrera, Jorge. "During suicide debate Justice Minister says it's time for First Nations to shed Indian Act 'shackles'" (13 April 2016) online: *aptn National News* <<http://aptn.ca/news/2016/04/13/during-first-nation-suicide-debate-justice-minister-says-its-time-for-first-nations-to-shed-indian-act-shackles/>>.

"Archives at the NCTR" *University of Manitoba* (undated), online: National Centre for Truth and Reconciliation <<http://nctr.ca/archives.php>>.

Canadian Council for Refugees, "Sun Sea: Five Years Later" (August 2015) Canadian Council for Refugees, online: <<http://ccrweb.ca/sites/ccrweb.ca/files/sun-sea-five-years-later.pdf>>.

Canadian Press, "Komagata Maru Apology: Full Text of Justin Trudeau's Remarks," *Huff Post Politics* (18 May 2016) online: Huffington Post <http://www.huffingtonpost.ca/2016/05/18/a-text-of-the-prime-minister-s-apology-for-the-komagata-maru-incident_n_10028790.html>.

Centre for Integrative Anti-Racism Studies, "Decolonizing Conference Ciars 2016: Race, Anti-Racism and Indigeneity: Anti-Colonial Resurgence and Decolonial Resistance" (Conference Program) 3-5 November 2016, online: <<http://www.decolonizingconference.com/program>>.

Correctional Service Canada, "Volunteer Orientation: Pre-Orientation Reading Assignment" (Dec 2005).

Dhaliwal, Preeti. "Comment: Apologies and the Komagata Maru", *Times Colonist* (24 May 2016) online: Times Colonist <<http://www.timescolonist.com/opinion/columnists/comment-apologies-and-the-komagata-maru-1.2261192>>.

Junot Diaz, "Second Person is Unbearable" (2015) YouTube. (25 April 2016), online: <https://www.youtube.com/watch?v=vDE3_XvS9ok>.

"EU and the Refugee Crisis" (July 2016), online: *European Commission* <<http://publications.europa.eu/webpub/com/factsheets/refugee-crisis/en/>>

Euractiv, "UN refugee chief: Worrying 'climate of xenophobia' in Europe" (19 June 2016), online: Euractiv <<https://www.euractiv.com/section/global-europe/news/un-refugee-chief-worrying-climate-of-xenophobia-in-europe/>>.

European Civil Protection and Humanitarian Operations, "Refugee Crisis in Europe" (20 June 2016), online: European Union <http://ec.europa.eu/echo/refugee-crisis_en>.

“Europe’s Migration Crisis” (2016), online: Human Rights Watch <<https://www.hrw.org/tag/europes-migration-crisis>>.

Hopi Elders, “We are the Ones We've Been Waiting For” (23 August 2010) *Awakin.org*, online: Awakin.org <<http://www.awakin.org/read/view.php?tid=702>>.

Jordan, June. “Poem for South African Women” in (1990) *Passion*, online: <<http://www.junejordan.net/poem-for-south-african-women.html>>.

Kazimi, Ali. dir, *Continuous Journey: A Film*, DVD (Canada: Peripheral Visions Film and Video, 2004).

“Komagata Maru: Continuing the Journey” SFU Digital library: Simon Fraser University, online: *Komagata Maru: Continuing the Journey* (2011) <<http://komagatamarujourney.ca/>>.

Maracle, Lee. “Lee Maracle Speaking at May Day Assembly 2011” (video), online: YouTube <<https://www.youtube.com/watch?v=FNK3KDfMrRc>>.

“Migrant crisis: Migration to Europe explained in seven charts” (4 March 2016), online: *BBC News* <<http://www.bbc.com/news/world-europe-34131911>>.

Mikdashī, Maya. “What is Settler Colonialism?” (17 July 2012), online: Jadaliyya <<http://www.jadaliyya.com/pages/index/6453/what-is-settler-colonialism>>.

News Wires, “Nearly 10 anti-migrant attacks a day in Germany” (26 February 2017), online: France 24 <<http://www.france24.com/en/20170226-germany-10-anti-migrants-refugees-attacks-day-data-xenophobia-racism>>.

Paulson, Steve. “Critical Intimacy: An Interview with Gayatri Chakravorty Spivak,” (29 July 2016) *Los Angeles Review of Books*, online: LARB <<https://lareviewofbooks.org/article/critical-intimacy-interview-gayatri-chakravorty-spivak/>>.

Pollock, Sharon & Ajmer Rode et al, “Performing the Postcolonial” (Playwrights’ Panel delivered at St. John’s College, University of British Columbia, 3 May 2014).

Smith, David. “Trump signs order to begin Mexico border wall in immigration crackdown” (25 January 2017) *US Immigration*, online: The Guardian <<https://www.theguardian.com/us-news/2017/jan/25/donald-trump-sign-mexico-border-executive-order>>.

Sen, Orijit & Rup Sidhu & Michael Yahgulanaas, “The Space Between: a Short Film on the Power of Art” (July 2016) online: Indian Summer (accessed 01 December 2016) <<http://indiansummerfest.ca/space-between/>>.

Shire, Warsan. “Globe Poetry: Home by Warsan Shire” (4 December 2015), *Poetry*, online: The Globe and Mail <<http://www.theglobeandmail.com/opinion/home/article27608299/>>.

Stone, Jon. "Syrian refugee crisis: How different countries have responded" (1 September 2016) *UK Politics*, online: Independent UK
<<http://www.independent.co.uk/news/uk/politics/syrian-refugee-crisis-how-different-countries-have-responded-france-lebanon-uk-a7220616.html>>.

Stanton, Jenny. "Artistic tribute or tasteless stunt? Thirty people recreate death of Aylan Kurdi by laying in the sand on a Moroccan beach dressed in the same clothes as the drowned Syrian boy" (9 September 2015) *Mail Online*, online: DailyMail
<<http://www.dailymail.co.uk/news/article-3227703/Thirty-people-recreate-death-Alyan-Kurdi-laying-sand-Moroccan-beach-dressed-clothes-drowned-Syrian-boy.html#ixzz4YXyKPUOZ>>.

UBC Asian Studies, "Performing the Komagata Maru: Theatre and the Work of Memory" (3 May 2014, University of British Columbia), online: YouTube
<<https://www.youtube.com/watch?v=YZqhKW8UMCY>>.

